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PROOF OF COMMON LAW MARRIAGE

I. COMPETENT JUDICIAL POWER OVER COMMON LAW MARRIAGES

THOUGH the mutual consent of the contracting parties effects a common law marriage, their mutual consent is powerless to dissolve or modify the marital contract. For marriage, by its divine institution, is indissoluble, and despite whatever contrary practices were permitted under the law of the Old Testament, Jesus Christ recalled and restored marriage to its pristine nature of an indissoluble, monogamous union. As Pope Pius XI proclaimed: ". . . let it be repeated as an immutable and inviolable fundamental doctrine that matrimony was not instituted or restored by man but by God; not by man were the laws made to strengthen and confirm and elevate it but by God, the Author of nature, and by Christ our Lord by whom nature was redeemed, and hence these laws cannot be subject to any human decrees or to any contrary pact even of the spouses themselves." [1] Even in civil legislation, the inability of the parties to proclaim their own dissolution of a marriage is recognized. A publication by the United States Government declares: "The element of contract is important at the inception of marriage in establishing the relation. When once established however, this relation is a matter of public concern, and the parties cannot terminate, dissolve, or modify their contract

[1] Pius XI, ep. encycl. "*Casti connubii*," 31 dec. 1930—*AAS*, XXII (1930), 539; English translation from *Five Great Encyclicals* (New York: The Paulist Press, 1939), 78.

by any subsequent agreement. The rights and obligations arising out of the relation are fixed by law." [2]

Canon 1960 asserts that "Matrimonial cases between baptized persons belong by proper and exclusive right to the ecclesiastical judge." This principle is repeated in the Instruction, issued in 1936 by the Sacred Congregation of Sacraments, for the purpose of regulating the actions of diocesan tribunals in handling marriage cases; and to remove any ambiguity which might result from the wording of canon 1016, the following is significantly added in the Instruction. "This holds true even if only one party is baptized." [3]

For Baptism removes a person from the jurisdiction of civil courts, in sacred matters, just as it does from the leg-

[2] Dept. of Commerce and Labor, Bureau of the Census, *Marriage and Divorce,* I, 182, 183. The outlook of English law on this point is similar, as expressed in the words of Lord Robertson, reprinted on the same page of the publication just mentioned.

"Marriage is a contract *sui generis,* and differing in some respects from all other contracts, so that the rules of law which are applicable in expounding and enforcing other contracts may not apply to this. The contract of marriage is the most important of all human transactions. It is the very basis of the whole fabric of civilized society. The status of marriage is *juris gentium,* and the foundation of it, like that of all other contracts, rests on the consent of the parties; but it differs from other contracts in this, that the rights, obligations, or duties arising from it are not left entirely to be regulated by the agreements of the parties, but are, to a certain extent, matters of municipal regulation over which the parties have no control by any declaration of their will; it confers the status of legitimacy on children, with all the consequential rights, duties and privileges thence arising; gives rise to the relations of consanguinity and affinity; in short, it pervades the whole system of civilized society. Unlike other contracts, it cannot in general, amongst civilized nations, be dissolved by mutual consent, and it subsists in full force, even although one of the parties should be forever rendered incapable, as in the case of incurable insanity, or the like, from performing his part of the mutual contract. No wonder that the rights, duties, and obligations arising from so important a contract should not be left to the discretion or caprice of the contracting parties, but should be regulated in many important particulars by the laws of every civilized country."

[3] *1936 Instruction,* art. 1—*AAS,* XXVIII (1936), 314; Doheny, *Canonical Procedure in Matrimonial Cases,* I (Milwaukee: The Bruce Publishing Co., 1938), p. 8.

islative power of the State in these affairs.[4] Even though only one party to a common law marriage were baptized, that marriage would be adjudicated by the ecclesiastical tribunal, as often as there arose a question concerning the marriage itself, or those things inseparably connected with the marriage bond. Thus, inseparably connected with the marriage bond would be the question of the freedom of the parties to contract marriage, questions concerning the existence, the worth, the canonical effects and the dissolution of former betrothals (though these would seldom occur prior to a common law marriage); likewise, all questions of the existence, the validity, the canonical effects, v. gr. legitimacy, the convalidation and the dissolution of the marriage itself, and finally any question pertaining to the dissolution of conjugal life, i.e., separation as to bed, board, and mutual cohabitation.[5] If, in a case brought to trial concerning any of these matters, at least one of the parties concerned, whether plaintiff or defendant, were validly baptized, the ecclesiastical judge alone would be competent.[6]

Because at times, the merely civil effects, such as the distribution of property, or the payment of civil taxes, may form the object of a trial, the Church declares: "Cases involving the merely civil effects of marriage belong to the civil court, according to the regulations of canon 1016, if they are introduced as principal actions. However, if they are merely incidental and accessory to a case, they can be judged by the ecclesiastical judge in virtue of his proper authority."[7] Thus, when only the property rights of the parties to a common law marriage are involved, the State can and should decide the question. If during an ecclesiastical trial con-

[4] C. 87.

[5] Cappello, *Tractatus Canonico-Moralis de Sacramentis*, III, *De Matrimonio* (4. ed., Romae: Apud Aedes Universitatis Gregorianae, 1939), pars 1, n. 60, p. 63.

[6] *1936 Instruction*, art. 1, § 3.

[7] *1936 Instruction*, art. 1, § 2; c. 1961.

cerning the validity of a common law marriage, the question of property settlement must be decided, the ecclesiastical judge is competent and may decide the question, though as Wernz-Vidal suggests, it would be more expedient to remand the case of property settlement to the civil courts.[8]

Since, as has been stated, the will of the parties is ineffectual to modify or abrogate the obligations of marriage, the Church declares: "Marriage cases involving the matrimonial bond cannot be settled by any private agreement of the parties or consorts, or by compromise through arbitration, or by a decisory oath; but only by public authority in virtue of a sentence of a competent tribunal or of an Ordinary in the summary cases mentioned in c. 1990." [9]

Thus far, it has been stated that the Church enjoys judicial competency over those marriages in which at least one of the parties is baptized. This competency remains the same whether the Baptism of one of the parties precedes the marriage, or whether after marriage, one of the two infidels to the marriage becomes a Christian.[10]

Over the marriage of two unbaptized persons the Church ordinarily exercises no competency, since such unions, entered by two people who are outside her pale, are not of concern to the Church. It might happen, however, that an unbaptized person, who had entered a common law marriage with another infidel, has deserted that union, and now desires to marry a Catholic. In such circumstances, the Church could not determine whether the Catholic party were free to marry, until the marriage of the other party had been investigated and its validity or nullity established. In such a case, the determination of the freedom to marry of the Catholic party belongs to the Church. Specifically, "the pastor whom the

[8] *Ius Canonicum* (7 vols. in 8), V, *Ius Matrimoniale* (2. ed., Romae: Apud Aedes Universitatis Gregorianae, 1928), n. 687, p. 827.

[9] *1936 Instruction*, art. 1, § 3; cf. cc. 1834; 1835; 1927, § 1; 1930.

[10] Payen, *De Matrimonio in Missionibus et Potissimum in Sinis Tractatus Practicus et Casus* (2. ed., 3 vols., Zi-ka-wei: In typographia T'ou-sè-wè, 1935-1936), III, n. 2650, p. 518.

law entitles to assist at the marriage shall in good time inquire whether there is any impediment to the marriage," [11] since "before marriage is contracted it must be certain that there are no obstacles to its valid and licit celebration." [12] The pastor of the Catholic, learning about the existence of a previous common law marriage on the part of the infidel, must seek the aid of his Ordinary, who by virtue of the connection of the cases, becomes competent even over the marriage of two infidels. As Wernz-Vidal states: "Because of the connection of cases in mixed marriages, which have been or are about to be contracted, it can easily happen, that a decision must be made concerning another marriage contracted in infidelity, and perhaps, dissolved by divorce. In these cases, because of the faithful party, the sole competent judge is the ecclesiastical judge, for it is up to him to decide concerning the freedom to marry of the faithful party. This judgment he cannot render, unless it be first settled concerning the validity or nullity of the marriage contracted, or deserted in infidelity. If these cases, because of their difficulty, be not referred in the first instance to the Holy See at once, they should, it seems, be decided by the Bishop of the place wherein the Catholic party has his domicile, according to the decree of the S. C. Inq. of June 30, 1892, and June 23, 1903, which agree with C. 1964." [13]

[11] C. 1020, § 1.

[12] C. 1019, § 1.

[13] "Praeterea propter connexionem causarum in hisce matrimoniis mixtis contractis vel contrahendis facile fieri potest, ut iudicium quoque sit ferendum de alio matrimonio antea in infidelitate celebrato, imo forte per divortium separato. Quibus in causis pariter ratione *patris fidelis* solus competens est judex ecclesiasticus; nam ad ipsum spectat iudicare de *status libertate* eiusdem fidelis. Quod iudicium dari nequit, nisi praevie constet de valore vel nullitate alicuius matrimonii in infidelitate contracti vel separati. Quae causae si propter difficultatem in prima instantia non statim ad Sedem Apostolicam deferantur, ex paritate decreta S. C. Inq., 30 iun. 1892, et 23 iun. 1903, quibus consonant can. 1964, coram Episcopo *domicilii partis catholicae* videntur esse definiendae."—Wernz-Vidal, *Ius Matrimoniale,* n. 687, p. 827, *in nota.*

The decrees of the Sacred Congregation of the Roman and Universal Inquisition, to which references are made in this quotation, concern the procedure to be followed when only one of the parties to a marriage is a Catholic, and state that the proper Ordinary is to be determined by the place of domicile of the Catholic; thus they agree with canon 1964 which states: ". . . In all other (*i.e., than those reserved to the Holy Father or the Holy See*) matrimonial cases the judge competent to try the case is the judge, of the place or diocese in which the marriage was contracted, or in which the defendant—or, if one of the married parties is a non-Catholic, the place in which the Catholic—has a domicile or quasi-domicile." [14]

In 1925 the following question was submitted to the Holy Office by the Archbishop of Freiburg: "Whether an ecclesiastical tribunal can pass on the validity of a marriage between two non-Catholics, at the instance of the non-Catholic party who now wishes to marry a Catholic, or at the instance of the Catholic party who is about to marry a non-Catholic, or at the instance of the Promoter of Justice alone?" The reply to the Archbishop, which was never published in the *Acta Apostolicae Sedis,* was: "Recourse is to be had in each case." [15] Though this reply, which is a private one to the Archbishop of Freiburg, is not binding on the universal Church, it may serve, nevertheless, as a helpful directive norm for any diocesan tribunal which encounters a similar case.

The ecclesiastical judge who presides over the case of two infidels applies, as Kay points out, not only the divine natural law and the divine positive law, but also the civil law in

[14] S. C. S. Off., 30 iun. 1892—*ASS,* XXVI (1893-1894), 753; Fontes, n. 1157; S. C. Inq., 23 iun. 1903—*ASS,* XXXVI (1903-1904), 165-166; *Fontes,* n. 1265.

[15] This reply of the Holy Office, given April 8, 1925, was first reported in *Periodica de Re Canonica et Morali utili praesertim Religiosis et Missionariis,* XIV (1925), 166, and is translated into English by Bouscaren, *The Canon Law Digest* (2 vols., Milwaukee: The Bruce Publishing Co., 1934, 1943), I, 763.

force in the place and at the time of the contracting of the marriage.[16]

II. THE RIGHT TO IMPUGN A COMMON LAW MARRIAGE

Before a formal trial to determine the nullity of a marriage may be started, some person, having the right in law to do so, must institute proceedings, either by accusing the marriage or by denouncing it as invalid. For " the Church cannot take cognizance of or decide any matrimonial case unless a regular accusation or a legal petition has been presented." [17]

To " impugn a marriage " means to institute an action before the competent tribunal for the purpose either of impeding a future marriage, or of declaring null a marriage already contracted, or of obtaining a separation of the married couple as to bed and board.[18] The term " impugn " will be used in the second of these senses, namely, to institute an action with a view towards obtaining a declaration of nullity. In speaking of common law marriage the grounds for impugning or denouncing the marriage will be precisely the lack of canonical form, prescinding from the possible presence of other impediments which might also be present. Lack of form is the distinctive, characteristic feature of common law marriages.

The right to impugn a marriage is limited so that none but the parties to the marriage and the Promoter of Justice, and these only under certain circumstances, may legally impugn the bond of a marriage.[19] Even the Ordinary should not impugn the marriage, when it is brought to his attention that

[16] Kay, *Competence in Matrimonial Procedure,* The Catholic University of America Canon Law Studies, n. 53 (Washington, D. C.: The Catholic University of America, 1929), p. 39.

[17] C. 1970; *1936 Instruction,* art. 34—*AAS,* XXVIII (1936), 313.

[18] Coronata, *Institutiones Iuris Canonici* (5 vols., Taurini: Marietti, Vol. III, 1933), III, n. 1485, p. 422.

[19] C. 1971; *1936 Instruction,* art. 35—*AAS,* XXVIII (1936), 313.

a certain couple may be living in an invalid marriage. He should refer the case to the Promoter of Justice, who, in turn, should impugn the marriage, as the law requires or permits.[20] Under the law prior to the Code, anyone of the faithful could impugn a marriage which was invalid because of a public impediment.[21] The law of the Code, however, and of the *1936 Instruction,* excludes all other persons except the parties to the marriage and the Promoter of Justice. There is conceded to interested third parties the right to denounce the marriage to the Ordinary or the Promoter of Justice; thus they may inform the Ordinary or Promoter of Justice of the invalidity of the marriage, and the grounds on which the union may be impugned, thereby affording the Promoter of Justice an opportunity to impugn it.[22]

Non-Catholics, whether baptized or unbaptized, are also excluded from exercising the rôle of plaintiff in an ecclesiastical court unless permission of the Holy Office has first been asked and granted in each case.[23] Thus a non-Catholic, who had entered marriage, would be prevented from impugning a marriage in a formal trial unless the permission of the Holy Office had first been secured. The Catholic party would not be hindered by the fact that his consort had been or is a non-Catholic. All mixed marriages, however, which are brought in any way to the judicial cognizance of the Holy See, pertain to the Holy Office, since that Congregation enjoys exclusive competence in any matrimonial case involving a non-Catholic.[24]

[20] *1936 Instruction,* art. 40—*AAS,* XXVIII (1936), 313.

[21] This right was forfeited by anyone who without legitimate cause remained silent about the impediment when he could have revealed it prior to the marriage. Cf. Wernz-Vidal, *Ius Matrimoniale,* n. 698, p. 834.

[22] *1936 Instruction,* art. 37, § 4—*AAS,* XXVIII (1936), 313.

[23] S. C. S. Off., 27 ian. 1928—*AAS,* XX (1928), 75; *Periodica de Re Morali, Canonica, Liturgica,* XVII (1928), 54; Bouscaren, *The Canon Law Digest,* I, 762, 763.

[24] S. C. S. Off., 27 ian. 1928—*AAS,* XX (1928), 75.

A further restriction of the right of the parties to impugn a marriage is placed upon those parties who have been the culpable cause of the impediment.[25] The word "impediment" was used in canon 1971 of the Code and article 35 of the *1936 Instruction.* Ordinarily this term does not include the lack of canonical form of marriage, since clandestinity is not listed among the impediments to marriage in the Code. Canons 1058-1066 list those impediments which make a marriage unlawful, though not invalid, and canons 1067-1080 list the impediments invalidating a marriage. The form of marriage, however, is decreed in canons 1094, 1098, 1099. But the Pontifical Commission for the Interpretation of the Code decreed in 1929 that the word "impediment" in canon 1971 includes not only the impediments properly so-called, as enumerated in canons 1067-1080, but also the impediments improperly so-called, which are listed in canons 1080-1103.[26] The language of article 37 of the *1936 Instruction* follows this interpretation in declaring that a party to a marriage may not impugn its validity, if he has been the "culpable cause of the impediment *or of the nullity.*"[27]

In a common law marriage the party guilty of the nullity would be anyone who is bound to observe a formal procedure for entering the marriage, yet who knowingly and willingly fails to comply with the law, when its observance is possible.[28] Doheny is of the opinion that the restriction of the guilty party's right to impugn is in the nature of a penalty. "Our opinion is that the disqualification or restriction is of the nature of a penalty," he states. "Wherever grave culpability exists, there the law binds with full force and the

[25] C. 1971; *1936 Instruction,* art. 35, § 1, 1°—*AAS,* XXVIII (1936), 313.

[26] PCI, 12 mart. 1929—*AAS,* XXI (1929), 171; Bouscaren, *The Canon Law Digest,* I, 807.

[27] *1936 Instruction,* art. 37, § 1—*AAS,* XXVIII (1936), 313.

[28] "A consort may be said to be the culpable cause of the impediment when he or she knowingly and willfully placed some obstacle calculated to render the marriage invalid."—Doheny, *Canonical Procedure in Matrimonial Cases,* I, 88.

parties are estopped from acting as plaintiffs. This culpability may arise from fraud, deceit, malice, and the like or it may result from a wilful neglect in the observance of the Church's laws on marriage." [29]

This concept of the penal nature of the restriction seems to be correct, especially since the party who places an honest and licit cause of an impediment is not denied the right to attack the marriage which is invalid because of the placing of that impediment.[30] The culpable party, not the one who acts honestly and licitly, is punished. As an example, Doheny declares that a young man who marries before he has attained the canonical age for marriage is not the culpable cause of the impediment merely by virtue of the fact that he is not yet sixteen; such a young man might in good faith think he was capable of marrying validly according to the law of the Church. If, however, knowing that he was too young to marry validly, the young man were to conceal his true age, fraudulently or maliciously, and marry, he would then be the culpable cause of the impediment, and would be unable to impugn the marriage.[31]

Applying the same reasoning to a marriage case which is brought to trial on the grounds of defective form, a person could not be plaintiff if he were culpable in omitting the prescribed form of marriage. Culpability in this case would arise from any ignorance which is vincible, that is, an ignorance which could have been dispelled by the use of moral diligence.[32] If a Catholic failed to attend church, and there-

[29] Doheny, *op. cit.*, I, 88, 89.

[30] PCI, 17 iul. 1933—*AAS*, XXV (1933), 345; 27 iul. 1942—*AAS*, XXXIV (1942), 241; also *1936 Instruction*, art. 37, § 2—*AAS*, XXVIII (1936), 313.

[31] Doheny, *ibid.*, p. 89.

[32] Ignorance is defined by Cicognani as "the lack of due knowledge," and is contrasted by him to *inscience*, or "the lack of knowledge that a person is not required to have." This learned canonist further classifies ignorance as vincible "if it can be dispelled by the use of moral diligence; this is culpable and at least indirectly voluntary." Cicognani, *Canon Law* (2. ed., authorized English version by O'Hara-Brennan, Philadelphia: The Dolphin Press, 1935), 590, 591.

by remained in ignorance of the Church law requiring formalities for marriage, his ignorance of the law would be culpable; so too, if a Catholic doubted about the procedure necessary to enter marriage, and yet failed to remove that doubt by asking a priest or someone who would know the law of the Church, his ignorance would be vincible or culpable. Culpable ignorance of the law cannot be claimed as an excusing factor so as to allow the ignorant party the right to attack the marriage.[33]

Invincible ignorance of the Church law requiring a formal marriage would not, however, prevent a person from attacking his marriage which had been invalid because of its defective form. Invincible ignorance in the words of Cicognani is had " when a person is unable to rid himself of it, notwithstanding the use of moral diligence; obviously such ignorance is involuntary and not imputable." [34] Because ignorance of the law is generally not presumed,[35] the plaintiff who claims invincible ignorance must prove that he neither knows the law nor could have known it even though he used the prudent diligence that men ordinarily employ in transacting serious business. Since the Church laws voiding informal marriage, in existence since the Council of Trent, have been universally promulgated at least since 1908 (the date of the Decree *Ne temere*), it is readily seen that cases of true invincible ignorance on the point in question would be most rare. Yet since a person, in invincible ignorance of the Church law requiring formalities for marriage, might conceivably exist, it must be admitted that such a person would not be estopped from impugning as plaintiff his common law marriage by

[33] Under canon 2229, § 3, culpable ignorance, even when it is not crass or supine, does not excuse from the incurring of a vindicative penalty imposed by law. Ignorance is said to be crass or supine, " when practically no effort is made to dispel it, because of heedlessness and laziness." Cf. Cicognani, *loc. cit.*

[34] Cicognani, *loc. cit.*

[35] C. 16.

virtue of the prohibition of canon 1970 and article 37 of the *1936 Instruction.*

When a guilty party denounces the invalidity of his marriage to the Promoter of Justice, this latter can impugn the marriage only when the following conditions are verified:

1. The impediment must have become public. (In our case, this would mean that the nullity of the common law marriage was publicly known, because it is divulged that one of the parties, at least, was held to the observance of a prescribed form for marriage.)

2. The impediment must be supported by arguments so certainly and strongly established both in fact and in law that there can be no serious doubt about the existence or force of the impediment or cause of nullity. In a common law marriage, the lack of ecclesiastical validation of the marriage would constitute a strong argument for the nullity, so long as at least one of the parties was held to observe the canonical form of marriage.

3. The public good, namely, the removal of scandal, must demand the accusation, in the judgment of the Ordinary. This scandal must arise from the marriage under attack or from circumstances attendant upon it, not, however, from some later or subsequent marriage entered into by one of the parties to the invalid marriage.

If, as often happens, the parties to the marriage under attack have already separated, or have already obtained a civil divorce, their marriage no longer serves as an occasion of scandal. If under such circumstances, one of the parties seeks a declaration of nullity in order to contract a new marriage, or in order to validate a second marriage already entered with a third person, the public good would hardly demand the accusation of the first marriage, since the separation of the parties has already removed the cause of scandal, and the public good cannot be said to demand an accusation of a marriage which no longer causes scandal; such being true, the Promoter of Justice would be excluded from acting as

plaintiff. The Ordinary, however, is to decide whether or not the public good has been sufficiently procured by the separation of the parties, and his judgment of such a problem is decisive and definitive.

A letter from the Apostolic Delegate to the United States stresses the fact that the Promoter of Justice will seldom impugn a marriage when the consorts are incapable of doing so. In this letter, Archbishop Cicognani states: "Hence the case in which the Promoter of Justice can impugn the marriage, when the consorts are disqualified, is very rare indeed, not to say exceptional. The reason is that the Promoter of Justice, under the authority and guidance of the Bishop, can act solely to foster the public good. And the public good demands that the culpable parties should not acquire freedom, as if in reward for their fault, but rather, *digna factis recipiant*, that they receive what is due their evil doing, and in this way serve as a warning to the rest of the faithful not to defile the celebration of Christian marriage with the exclusion of the *bona matrimonii* or with simulations of consent." [36]

4. Even upon the cessation of the impediment, the marriage could not be properly contracted. If marriage between the parties is possible when the impediment ceases, the Church strives rather to procure the validation of the union, as justice would thus best be served. For as Doheny points out,[37] the cohabitation of the parties which has thus far existed has established a certain identification between the parties, since cohabitation is normally the life of wedded persons.

Sometimes marriage will be impossible even after the cessation of the impediment. Thus in a common law marriage, the parties may be threatening to separate because of

[36] Letter of Apostolic Delegate on Handling of Marriage Cases in the United States (Apostolic Delegation, U. S., 23 sept. 1938, private)—Bouscaren, *The Canon Law Digest*, II, 531.

[37] *Canonical Procedure in Matrimonial Cases*, 98.

domestic discord, and in such a situation their perverse wills render impractical any attempt to celebrate marriage in the proper form.[38]

Since the prohibition against the party culpable of the cause of nullity holds in any court, it is required for validity that in the court of second instance, the Promoter of Justice act as plaintiff since the parties to the marriage cannot do so.[39]

III. PROOF OF COMMON LAW MARRIAGE

To facilitate the treatment of this subject matter and in an endeavor to clarify a rather perplexing problem, this article will be divided so that the proofs admissible in the informal procedure will be discussed first; then will be treated the proofs allowable in a formal marriage trial, first when that trial concerns a marriage in which at least one of the parties, through Baptism, is subject to the norms of Canon Law, and secondly, a trial in which neither party to the marriage under attack is baptized, but in which the ecclesiastical judge is competent by virtue of the fact that one of the parties to the marriage under attack now wishes to marry a Catholic.[40]

A. Proof Admissible in an Informal Procedure

The informal procedure for declaring a marriage null because of defective form can be used only when at least one party to the marriage is certainly bound to the canonical form of marriage, and yet has failed to observe that form.[41] Furthermore, proof in this process must be established be-

[38] Cf. *1936 Instruction,* art. 39—*AAS,* XXVIII (1936), 313; Doheny, *op. cit.,* I, 96-98.

[39] Dalpiaz, "An in altera instantia causae de qua in can. 1971, § 1, n. 2. requiratur ad validitatem interventus promotoris iustitiae, etiamsi defensor vinculi appellationem interposuerit?"—*Apollinaris* (Romae, 1928-), VIII (1935), 139, 140.

[40] Cf. *supra,* pp. 397, 398.

[41] *1936 Instruction,* art. 231—*AAS,* XXVIII (1936), 313 sqq.

yond a question of doubt, for if doubt remains after prudent investigation, the question must be decided according to the ordinary procedure of law, i.e., by a solemn canonical trial. These requirements are demanded by article 231 of the *1936 Instruction.* Thus the informal procedure could be used whenever a Latin Catholic has failed to enter a formal marriage as the canons demand, but instead has entered a common law marriage. If the common law marriage is one which was entered according to the prescriptions of canon 1098, this procedure cannot be used if the marriage stands recorded as is demanded by canon 1103; for in such a case the marriage has been entered according to the less formal prescriptions of the canons.

The informal procedure would be available for any marriage entered by a Catholic which did not conform either to the prescriptions which demand the usual juridical form of marriage on the part of Catholics or to the prescriptions which obtain for those cases wherein the full formalities are impossible of observance. When all canonical provisions have been neglected, proof of the non-observance of these formalities may be discovered by a search of the records of those parishes or dioceses wherein it was possible for the couple to have had their marriage canonically celebrated, validated or healed through a dispensation from the form of marriage or through a *sanatio in radice.* Any ecclesiastical record which states that the marriage was canonically contracted also proves the existence of that marriage; for the marriage records in a parochial or diocesan registry, as well as all official copies or transcripts thereof, constitute public documents and accordingly afford full proof of the fact of marriage.[42] Similarly, the lack of registration of any such

[42] Canon 1812 mentions that proof by public document is admissible in any ecclesiastical trial, and therefore it seems but right that public documents be accepted without question in an informal procedure; canon 1813, § 1, 4°, lists as public ecclesiastical documents: "inscriptiones . . . matrimonii . . . quae habentur in regestris Curiae vel paroeciae, vel religionis, et attestationes

marriage attests the fact that such a marriage was not duly performed, and therefore the non-observance of canonical formalities may be established by a search of the ecclesiastical records. If the person to whose care these records are by law committed should draw up or sign a document attesting to the negative result of the search for the marriage record, such a document would afford adequate proof that no marriage had been duly contracted. For though the non-existence of a fact will not frequently be proved by a document, nevertheless an official document drawn up or signed by the legal custodian of an ecclesiastical register when he acted in his official capacity may afford proof equal to that of a document proving a positive fact.[43]

B. Proof Admissible in a Formal Trial

In judicial trials the existence of a marriage may be proved by documentary evidence, by the testimony of witnesses, or in some cases by the testimony of the parties themselves. Inasmuch as a marriage in which at least one party is baptized must be adjudicated according to the norms of Canon Law, while a marriage of two unbaptized is subject to the legislative prescriptions of civil law, these two types of common law marriage will be treated separately. In either of these possible situations proof may be of the contract of marriage itself, or it may affirm only the status of marriage.

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scriptae ex eisdem assumptae et a parochis, vel Ordinariis, vel notariis ecclesiasticis confectae aut earum exemplaria authentica."

Even though the facts entered on the marriage register depend on the testimony of the witnesses or of the parties to the marriage as often as the marriage has been entered according to the prescriptions of canon 1098, nevertheless the value of such records consists in the vigilance of the pastor or of the official who makes the entry, since he is bound by his office to enter in the record only those facts the veracity of which he can attest, and in fact does so attest by making the entry. Cf. Lega-Bartoccetti, *Commentarius in Iudicia Ecclesiastica* (3 vols., Romae: Anonima Libraria Cattolica Italiana, 1938-1941), II, 786.

[43] Cf. PCI, 16 iun. 1931, ad I—*AAS*, XXIII (1931), 353, 354; Sartori, *Enchiridion Canonicum* (6. ed., Vincentiae: ex Typographia Commerciali, 1938), pp. 360, 361.

1. MARRIAGE IN WHICH AT LEAST ONE PARTY IS BAPTIZED

At the outset it must be remembered that not only all Latin Catholics but also the Catholics of some Oriental disciplines are bound to observe formalities in entering marriage, while baptized non-Catholics and the Catholics in certain Oriental disciplines are not held to the observance of any formalities in contracting marriage. For this latter group any mutual expression of true marital consent may constitute marriage.

For all baptized persons, however, the physical presence of the parties in the same place at the time of marriage either personally or by authorized proxy is demanded by canon 1088, §1. Through the employment of a duly authorized proxy a baptized person can contract marriage while he is separated from his partner in the celebration of the marriage. Canon 1088, §2, ordains that the couple entering the marriage should express their consent in words; therefore, any other means or form of expressing that consent is illegal, though the marriage could still be valid. The exemption from the Catholic form of marriage, granted to baptized non-Catholics,[44] does not extend to the prescriptions of canon 1088, since this canon is not listed in the Code among those canons which decree the form of marriage, but rather it is found among those canons which determine the necessity of consent, and it therefore comes under those canons concerning which Nau states: "The Church has enacted for the baptized certain laws which declare and define more explicitly the requirements of the natural law and has moreover added thereunto other requirements to more fully protect the free choice of the contract."[45] It seems that the prescriptions of canon 1088 also extend to Orientals, even though they be not bound by the form of marriage as expressed in the Code.

[44] C. 1099, § 2.

[45] Nau, *Manual on the Marriage Laws of the Code of Canon Law* (2. ed., New York: Frederick Pustet Co., 1934), n. 98, pp. 121, 122.

(a) *Proving the Contract of Marriage*

Documentary evidence of the contract of marriage is rare in a common law marriage. However, since the term "common law marriage" as used in civil law admits of connotations other than a mere clandestine union, the possibility of documentary proof of such a marriage cannot be overlooked.

Common law marriage includes, besides a union which is secret or clandestine, those marital unions which were formally entered, but invalidly so because of the incompetency of the officiating minister,[46] or because of the presence of some diriment impediment, and which after the cessation of the impediment were validated by the continuing consent of the parties. As Koegel remarks: "The general rule in a State recognizing common law marriage is that the continued cohabitation of the parties after the removal of the impediment to a valid ceremonial marriage constitutes a common law marriage, and in a few jurisdictions marriages under such circumstances are recognized, although common law marriages as such are invalid." [47]

The Church admits no such validation of a marriage by mere continuance of consent or cohabitation. While the fact that a marriage was entered gives rise to a presumption of its validity,[48] the continuance of a union which was invalid at the start does not render the union valid. If some impediment had hindered the validity of the marriage, then upon the cessation of that impediment a new contract would have to be entered, by a new act of the will of both parties, or at least of the one who knew of the existence of the impediment, before the marriage would be canonically valid.[49] If de-

[46] The term "minister" is here used in its generic sense to include a priest or civil official, as well as a minister of a non-Catholic sect.

[47] Koegel, *Common Law Marriage* (Washington: John Byrne & Co., 1922), p. 153.

[48] C. 1014.

[49] Cc. 1133, 1134.

fective consent had impeded the validity of the marriage, otherwise formally valid, the renewal of consent by that party who had not truly consented would be required and would suffice to render the marriage valid,[50] provided that the consent of the other party perseveres. If the defect of consent was external at the beginning of the marriage, then the renewal of consent must be made externally; if proof of this external renewal of consent was not adduced in a marriage in which it was required, the continued cohabitation of the parties does not afford any presumption that the marriage is a valid one. Thus if the marriage contract of a Catholic is invalid because one of the parties did not externally manifest his consent during the celebration of the marriage according to the prescribed juridical form, then the marriage itself is invalid. No matter how long the appearances of marriage are maintained, that external defect in the expression of consent—which would be equivalent to the lack of proper form inasmuch as an essential part of the form was omitted—continues to exist, and the marriage does not become validated until the consent is actually expressed in the proper canonical form, namely in the presence of a duly authorized priest and two attendant witnesses. Documentary proof of the renewal of consent in the external forum should be sought, then, in the marriage register of the parish or diocese wherein the marriage was contracted. If such proof is lacking, no presumption of validity should be accorded to the marriage.

Another instance in which documentary proof of the contract of common law marriage is available is had in the case of a marriage contracted according to the prescriptions of canon 1098. A marriage of this kind, which was performed without the full solemnities of the Catholic ritual and without the assistance of a qualified witness authorized by ecclesiastical law to assist at marriage, is according to the terminology of civil law a common law marriage, provided of course that

[50] C. 1136.

none of the witnesses to the marriage was authorized by civil law to accept or receive the consent of the parties. Yet a marriage before witnesses alone may be a formal civil marriage if one of the witnesses was accredited in civil law as a competent person for witnessing civil marriages, v. gr., a justice of the peace, or a priest not canonically authorized to assist. Ordinarily, however, such marriages are regarded as non-ceremonial in the eyes of the civil law, inasmuch as they do not conform to the requisites of a formal marriage.

Canon law provides for the registration of such marriages by placing an obligation on a priest, if he be present, and on the witnesses conjointly with the parties to the marriage, of seeing to it that the marriage be recorded in the parochial or diocesan register.[51] The ecclesiastical record of such a marriage would afford full proof that the marriage was celebrated, and, similarly, the lack of such a record would indicate conclusively that the marriage had not been performed.[52]

For baptized non-Catholics, for whom no form of marriage is required, proof of the contract of marriage can be established by a document provided that the parties expressed their consent in writing in each other's presence. This document, if signed by a notary, constitutes a public document: as such it affords full proof of the marriage.[53] If the written evidence of matrimonial consent is afforded by a private docu-

[51] C. 1103, § 3. The registration which seemingly, according to the text of the law, may be made either in the records of the parish where the marriage took place, or in the records of the parish where ordinarily the marriage should have occurred, is, according to the more common opinion, to be recorded in the parish (or diocese, if no parish exists) where the marriage was contracted. Cf. O'Rourke, *Parish Registers*, The Catholic University of America Canon Law Studies, n. 88 (Washington, D. C.: The Catholic University of America, 1934), p. 73.

[52] Cf. *supra*, p. 408.

[53] C. 1813, § 1, 2°, which declares that a public document is one which is drawn up by an ecclesiastical notary; § 2 of the same canon declares that a civil public document is any document which is recognized as such according to the civil law of the place wherein it is drawn up. Civil laws recognize as public those documents which are signed by a notary public.

ment, such as a contract signed by the parties only, then such a document affords full proof of the marriage, provided that it stands proved as genuine, i.e., not forged, multilated or garbled. For though any letter, document or contract executed by private persons is not a public, but rather a private document,[54] yet, when it is acknowledged by its author as his own writing or when it is accepted as genuine by the judge, it furnishes proof against the author.[55] Consequently, in any matrimonial trial, wherein a marriage is impugned, if a letter expressing matrimonial consent be adduced as evidence against the one who denies the existence of the marriage, the fact that he wrote the letter or contract which expresses his matrimonial consent therein furnishes proof against his present contention that he never entered the marriage.[56]

American civil law has recognized as valid a marriage which is entered by document or letter, though such recognition is usually, though not entirely, reserved to those jurisdictions which recognize common law marriage as valid.[57]

In defect of documentary proof of the contract of marriage, the testimony of witnesses can prove that matrimonial consent was exchanged between the parties. Though the case would be a rare one, witnesses who heard the parties pledge themselves one to the other as man and wife could afford full

[54] C. 1813, § 3.

[55] C. 1817.

[56] Thus the Roman Rota recognized as valid under pre-Code law the matrimonial consent of a groom, when his letter which expressed his consent to the marriage had been read in the presence of the bride's pastor and two witnesses; S. R. R., *Nullitatis matrimonii,* coram R. P. D. Gustavo Persiani, 19 ian. 1910, dec. III—*Decisiones* II (1910), 19-32; *AAS,* II (1910), 297-309.

[57] "In many American jurisdictions the assent of parties capable of contracting marriage is all that is required to a valid marriage and that consent need not be expressed before any religious or civil celebrant. In such a jurisdiction if two persons exchange letters wherein *per verba de praesenti* they take each other as husband and wife they are legally married." These words from an editorial in 22 Law Notes (1919) are quoted in Koegel, *Common Law Marriage,* p. 133; cf. also p. 131.

proof of that fact; the concordant testimony of two witnesses above exception would of course be required.[58] If contrary indications in the case should engender a doubt about the assertions of the witnesses, it is within the province of the judge to demand further proof.[59] However, the denial by either or both of the married parties does not effectively contradict the legitimate depositions of acceptable witnesses.[60]

In defect of registration of the marriage and of witnesses to the expression of consent, the testimony of the parties assumes prime importance. If both parties under oath affirm the fact of marriage, their assertions must be believed except when their testimony is prejudicial to a former marriage publicly contracted. If one of the parties had previously publicly contracted marriage with a third party, his later common law marriage would not be sufficiently proved by the mere testimony of the parties themselves, unless it could be proved that the former public marriage was certainly invalid.[61] If full proof be not required, e.g., if no other marriage were prejudiced by the assertions of the parties, their sworn statements may be accepted as proof of their marriage and of the legitimacy of their children.[62]

If both parties under oath deny that they ever contracted marriage, their testimony, in defect of other proof, will suffice to establish their freedom to marry.[63]

If one party affirms the common law marriage, while the

[58] C. 1791, § 2; Whalen, *The Value of Testimonial Evidence in Matrimonial Procedure,* The Catholic University of America Canon Law Studies, n. 99 (Washington, D. C.: The Catholic University of America, 1935), pp. 251-253.

[59] C. 1791, § 2.

[60] Wernz-Vidal, *Ius Matrimoniale,* n. 580, p. 679.

[61] Wernz-Vidal, *Ius Matrimoniale,* n. 580, p. 687.

[62] S. C. de Sacramentis, 6 mart. 1911—*AAS,* III (1911), 103; Payen, *De Matrimonio,* II, n. 1930, p. 303.

[63] C. 1, X, *de sponsalibus et matrimonio,* IV, 1; Wernz, *Ius Decretalium,* Vol. IV, *Ius Matrimoniale* (Romae: 1904), pars 1, n. 187, pp. 281, 282.

other party denies it, the burden of proof rests on the one who asserts that marriage was contracted.[64]

In the face of contradictory assertions of the parties concerning the fact of marriage, the status of marriage will usually be advanced as indicative or presumptive of the fact that the contract of marriage was entered.

(b) *The Status of Marriage as Proof*

In the eyes of the civil law, proof of common law marriage usually depends upon the assumption of the marital status by the parties. In fact it may be said that the assumption of the marital status is requisite for common law marriage, unless the contract be capable of proof in writing or some equally certain manner. For the courts have held as a matter of general policy: (1) That some public recognition of the marriage is necessary as evidence of its existence;[65] (2) that this necessary public recognition may be present in any way which can be perceived;[66] (3) that a single act of public recognition suffices, and that no continuance or repetition of it is required.[67] Once a man and woman have given evidence that they treated and considered each other as man and wife, civil law in those states which recognize common law marriages as valid presumes the couple to be

[64] C. 28, X, *de sponsalibus et matrimonio,* IV, 1; Wernz, *ibid., in nota* 257.

[65] "To insure the protection of the parties and their children and upon consideration of sound public policy, some public recognition of the marriage is necessary as evidence of its existence."—Matter of Seymour, 113 Misc. 421, 423, 185 N. Y. S. 373—38 C. J. § 93, p. 1318.

[66] "This public recognition may be made in any way which can be seen and known by men, such as living together as man and wife, or by public conduct which acknowledges the relation."—Sorenson v. Sorenson, 68 Nebr. 483, 509, 94 N. W. 540—38 C. J. § 93, p. 1318.

[67] "The law does not require that they live together at all after the contract of marriage is made to render the marriage a valid one . . . . A single act of consummation and a single act of recognition would be competent to support the contention that the parties constituted and actually entered into a marriage contract."—Davidson v. Ream, 97 Misc. 89, 111, 161 N. Y. S. 73; affd. 178 App. Div. 362, 164 N. Y. S. 1037—38 C. J. § 93, p. 1318.

properly married. While cohabitation and the repute of marital status are not constitutive of marriage—and this principle is recognized in civil law [68]—yet they are taken as indicative of the existence of the marriage contract and are productive then of a presumption of marriage. The cohabitation as man and wife may give rise to the presumption that an actual marriage has been contracted, even though no documentary evidence or direct testimony thereof exists. This presumption of the contraction of marriage, in the absence of any evidence in rebuttal, may be considered conclusive of the fact that marriage was contracted. The presumption, however, may always be rebutted, and it wholly disappears in the face of proof that no marriage in fact has taken place.[69]

In ecclesiastical jurisdiction two kinds of presumption [70] are recognized, namely, those which are predetermined in the law itself and those which are formulated by a judge. The former, the presumption of law, may be a *simple* presumption, which admits direct rebuttal, or it may be a presumption, *in the law and by the law,* which does not admit of direct rebuttal and thus remains irrefutable except through a successful impugnment of the juridical fact which forms a basis for the presumption. A presumption of law releases from the burden of proof, and unless it is overthrown it forms the basis of a necessary decision in favor of the party who enjoys that presumption.[71]

[68] "Marriage and cohabitation are two things. The latter is the object of the former, and to make it lawful, must be preceded by the former. It is said, indeed, that a marriage contracted *per verba de futuro,* which is in truth nothing but a promise to marry in future, is a valid marriage if the parties afterward cohabit; but the cohabitation, even in that case, does not constitute the marriage. It is only evidence of the marriage . . ."—Dumaresly v. Fishly, 10 Ky. 368; in Koegel, *Common Law Marriage,* pp. 121, 122.

[69] 38 C. J. § 98, pp. 1321, 1322; 38 C. J. § 111, p. 1339.

[70] Canon 1825, § 1, defines presumption as a probable conjecture on an uncertain issue; as Wanenmacher points out, the value of a presumption may be variable and it "depends on whether the probable conjecture rises in effect above probability and attains to moral certainty."—*Canonical Evidence in Marriage Cases* (Philadelphia: Dolphin Press, 1935), n. 384, p. 239.

[71] Cc. 1825-1827.

At one time canonical jurisprudence recognized the possible existence of a presumed marriage which was based on a presumption *in the law and by the law.* Pope Alexander III (1159-1181) decreed that formal nuptial promises, *sponsalia de futuro,* followed by carnal marriage constituted marriage.[72] Shortly thereafter Gregory IX (1227-1241) declared that, if a man and woman had concluded a formal agreement to marry in the future, and had subsequently had sexual relations with each other, the Church would presume by an irrefutable presumption that the parties were married, and that the act of sexual intercourse had given present manifestation of the marital consent which had been pledged to become operative in the future. So strong was this presumption that a formal marriage, which amid ecclesiastical ceremonies was subsequently contracted by the man with another woman, could not militate against it. Despite his second wedding *in facie ecclesiae* the man was compelled to return to the first woman.[73]

This inevitable legal presumption of marriage may be traced back to Roman law for its foundation. For Justinian points out that a betrothal followed by *coitus* is marriage.[74] At face value, this presumption seems to contradict the constant teaching of the Church that marital consent alone constitutes marriage, and that no human power can supply for the deficiency of that consent.[75] Freisen inferred that the Papal Decretals of Alexander III and Gregory IX derived the presumption of marriage from the frequency of secret marriages in those times, and sanctioned the presumption by constituting betrothals followed by carnal relations as a diriment impediment to any subsequent marriage by either

[72] C. 15, X, *de sponsalibus et matrimonio,* IV, 1.

[73] C. 30, X, *de sponsalibus et matrimonio,* IV, 1.

[74] Nov. 74.

[75] C. 1081, § 1; Wanenmacher, *op. cit.,* n. 427, p. 273.

of the betrothed parties.[76] Wanenmacher points out that the presumption probably arose as a juridical effort to curb moral abuses, and that it rested " on the assumption that if, in such circumstances, marital consent is not presumed, fornication must be presumed, and to this presumption of crime the Church is not easily inclined." [77]

With the introduction of the law requiring a formal marriage for Catholics by the decrees *Tametsi* and *Ne temere* and by the Code, presumptive marriage was and is no longer admissible for Catholics. Pope Leo XIII totally abrogated this presumption so that it no longer exists, not even as a simple presumption of law.[78]

Concerning the presumptive force of the appearance of marriage, that is, of the repute of marital status derived from cohabitation, for Catholics it must be maintained that unless some *species* of a marriage contract has been observed, the marriage does not enjoy the presumed existence which canon 1014 interposes by its enunciation of the principle that " marriage enjoys the favor of law." This canon sets up a presumption that once the fact of marriage is present, the law will presume until the contrary is proved that the marriage is valid. It is not in accord with justice that the fact of marriage be presumed; otherwise any person could prevent another from entering marriage merely by stating that that other had already entered marriage. Thus if, when a man is about to enter marriage, a woman should approach the pastor and claim that she was already married to the man and that therefore he is not free to enter the presently proposed marriage, her statement of itself would not be accorded the presumption of canon 1014. If it were, the way would be opened to a situation in which every person entering marriage could

[76] Freisen, *Geschichte des canonischen Eherechts bis zum Verfall der Glossenlitteratur* (2. ed., Paderborn, 1893), pp. 209-211.

[77] Wanenmacher, *Canonical Evidence in Marriage Cases*, n. 427, p. 273.

[78] Leo XIII, const. *Consensus mutuus*, 15 febr. 1892—*Collectanea*, n. 1279; *Fontes*, n. 613.

be called upon to prove that he was not already married, each time that someone asserted that he was.

The rule of canon 1748, §1, states that the burden of proof rests with the person who makes the assertion. There is no trouble in applying this rule in a trial concerning the validity of a marriage, *once the fact of marriage is admitted.* The plaintiff who denies the validity of the marriage is he who asserts that some impediment hindered the valid contraction of the marriage; he must prove his assertion, namely that the alleged impediment really existed. Nor is there any difficulty in applying the same rule if the plaintiff sues to establish the *fact* of marriage. As plaintiff he must sustain the burden of proof and prove that the marriage was entered. However, it can happen that the plaintiff may deny the *fact* of marriage. For example, a reputed common law marriage, i.e., so reputed in the opinion of neighbors, is alleged by someone as an impeding factor to a marriage about to be entered by the plaintiff; he, in attempting to prove his present freedom to marry, could deny the existence of the alleged common law marriage. In other words, he denies the *fact* of marriage. He does not admit the fact of marriage and base his plaint on the grounds that some impediment co-existed with the celebration of the marriage to hinder the valid contraction of the marriage; he denies that a real marriage, i.e., one in the eyes of canon law, took place. In reality then, it is the defendant who claims that the marriage occurred; it is the defendant who makes the assertion and, so it seems according to canon 1748, §1, he must sustain the burden of proof. For in such a case the plaintiff's plea of the nonexistence of marriage is based, in the terminology of Wanenmacher, "on a negation of law (*negativum juris*) wherein it is denied that a thing has been done according to law." And as Wanenmacher states: "If the thing or act whose legality or validity is denied belongs to the class of things in general forbidden, v. gr., clandestine marriage, the burden of proof

devolves upon him who asserts the legality or validity in a particular case." [79]

The Roman Rota, in a case tried in 1909, declared that sometimes it is equitable to depart from the presumption of law: "*In dubio standum est pro validitate matrimonii,*" and as an example of a case in which it is equitable to depart from that presumption it is stated: "Nam si a iuris praesumptione '*in dubio standum est pro validitate matrimonii,*' aliquando recedere aequum est, quando nimirum quaestio agitur de facto, utrum scilicet matrimonium fuerit unquam contractum necne, in praesenti," etc.[80]

From this decision Chelodi argued that, even under the law of the Code, as often as a truly clandestine marriage occurs, the marriage is not presumed to exist as a true marriage, but that inasmuch as it is something odious in law it must be proved.[81]

For a common law marriage, then, in which at least one of the parties is a Catholic, it must be stated that no matter how certainly the repute of marital status or the appearance of marriage is proved, unless there exists some record or registration of the marriage in the ecclesiastical records, or unless the formal marriage can be proved in some other certain manner, the common law marriage enjoys no presumption of validity and must be considered a sinful alliance.

If, on the contrary, no Catholic is involved in the marriage, but at least one of the parties has been validly baptized, the

[79] Wanenmacher, *Canonical Evidence in Marriage Cases*, n. 142, p. 85. That the burden of proof may sometimes rest on the defendant instead of on the plaintiff is admitted by Lega, *De Iudiciis Ecclesiasticis* (2. ed., 2 vols., Romae: Ex Typographia Polyglotta, 1905), I, n. 444, pp. 395-396; and Roberti, *De Processibus* (2 vols. in 1, Romae: Apud Aedes Facultatis Iuridicae Ad S. Apollinaris, 1926), II, n. 226, p. 28.

[80] S. R. R., *Nullitatis matrimonii*, 28 maii 1909, coram R. P. D. Aloysio Sincero, dec. VI, n. 12—*Decisiones*, I (1909), 58. The Rota in arguing that it is sometimes equitable to depart from the presumption of the validity of a marriage, stated that it drew this argument from a decree of the Holy Office under date of Dec. 18, 1872. This decree is found in the *Collectanea*, n. 1392.

[81] Chelodi, *Ius Matrimoniale*, n. 7, p. 8.

well grounded repute of marital status will give rise to the presumption that a valid contract has been entered. If the parties have held each other out in public as man and wife, if certain proof exists that they have cohabited as man and wife (not in a meretricious union or concubinage) then their status of marriage gives rise to the presumption that a valid marital contract has been entered. Since for baptized non-Catholics there is no requirement of a specific juridical form in the celebration of their marriage, a common law marriage on their part would not constitute an odious issue in the eyes of the Church's law, and therefore the presumption of canon 1014 would be validly applied by presuming their marriage to be valid.

The presumption that the couple is married may be established from any one or several of the following circumstances: The man and woman register as man and wife at a hotel or public place; the man and woman have a joint bank account, on which their names appear as man and wife; they file a joint income tax, as is done by a married couple; in the presence of third persons they treat each other and speak of each other as man and wife; one of the parties mentions the other as husband or as wife, as the beneficiary of an insurance policy. Any one of these facts is indicative of the fact that the parties have accepted each other as man and wife. And since for them there existed no requirement of any specific form in the celebration of their marriage, their assumption of the marital status must be presumed as indicative of true marital consent until the contrary stands proved.

Therefore the parties are presumed to have cohabited with marital intent rather than with sinful intent, and if the case at hand does not demand full proof, the presumptive force of their assumed status suffices to form the conclusion that they were married.

If, however, full proof be demanded, as, e.g., in the case wherein the common law marriage would prejudice another, formal marriage, the mere presumption would not suffice.

For in marrying later in accord with a formal ceremony, the man who previously entered a clandestine union implicitly admits the wrongfulness or sinfulness of his first union. The certain proof of the formally contracted marriage establishes the later marriage as a certain fact, a fact which, once it is established, enjoys the presumption of validity according to the principle of canon 1014.[82] If the formally contracted marriage had preceded the clandestine union, the former of these marriages would be held as valid until it is proved null; if it is proved null, then the subsequent common law marriage could be and should be presumed as valid. If two successive common law marriages are encountered, it seems that, if no other decisive factor is present, the first of these marriages must be recognized as valid by way of presumption. While it is true that in any trial involving two successive common law unions a certain perplexity would be experienced by the court from the fact that each of the two marriages as taken up by the court enjoys the presumption of validity; yet the decision concerning the second marriage must be held in abeyance until the validity or nullity of the first is determined. Once it is proved that the status of marriage was assumed, the validity of the earlier marriage must be maintained until its invalidity is established by proof which rules out the presumed validity. Consequently the extant presumed validity for the bond of the existing marriage impedes the celebration of a subsequent marriage, and whatever presumption of validity may rest with the second marriage must yield to the presumption which favors the existence of the impediment of the prior bond (*ligamen*), for this impediment must logically be considered as present as long as the presumption of validity rests with the prior marriage.[82a]

2. MARRIAGE IN WHICH NEITHER PARTY IS BAPTIZED

The marriage of two infidels must be adjudged according to the legislation in force in the place where the marriage

[82] Wanenmacher, *Canonical Evidence in Marriage Cases*, n. 485, pp. 311-314.

[82a] Cf. PCI, 26 iun. 1947—*AAS*, XXXIX (1947), 374.

was contracted. If the law of the state requires a formal ceremony for the contraction of a valid marriage, the parties cannot enter a valid common law marriage. The Holy See apparently implies that custom also may legislate for the non-baptized, for in a recent decision it was asked whether Chinese infidels in the Dutch East Indies, who contract marriage according to the manner of the Chinese, marry invalidly in the face of laws requiring certain formalities, obligatory in the Dutch East Indies. The reply was that the marriages were not certainly invalid under the circumstances, and it was declared that upon conversion such infidels should renew the matrimonial consent at least *ad cautelam*.[83] In the light of this response the Holy Office apparently was not certain whether some custom, privilege, or particular law would allow the Chinese to marry according to their own manner. In any event the reply, since it fails to state conclusively whether the marriages were valid or invalid, does not form the basis of proof either for or against the competency of civil laws or customs over infidels.

As previously stated, civil authority is competent to legislate for the unbaptized, so that their common law marriage must be adjudged according to their proper law. However, as the judge must have moral certitude in rendering judgment in a canonical trial,[84] the decisions of civil courts cannot be taken at face value as conclusive evidence. Rather the ecclesiastical judge should hear the arguments of the case. But for his purpose the recorded proceedings of the civil trial may be admitted as evidence and may go far towards facilitating the presentation and adjudication of the case.

Proof of the contract of marriage among infidels may be adduced in any of the manners indicated for the baptized,[85]

[83] S.C.S. Off., 23 iun. 1938 (Private)—Bouscaren, *The Canon Law Digest*, II, 250-252.

[84] C. 1869, §§ 1, 2.

[85] Cf. *supra*, pp. 410-415.

but also the further possibility that the unbaptized may contract marriage while not in each other's presence must be considered.

American civil law has recognized as valid marriages which were contracted by document or by letter, though such recognition is usually, though not entirely, reserved to those jurisdictions which recognize common law marriage as valid.[86]

During World War I the U.S. War Department assisted in the preparation and transmission of documents whereby soldiers in Europe contracted marriage with girls in America. These marriages were held valid, if the bride lived in a state recognizing mere consent as constitutive of marriage.[87] These documents were drawn up and signed by the respective parties in the presence of witnesses and of a notary public, thus giving them the force of public civil documents. Any public civil document is in canon law accepted as full proof of the facts it expresses.[88]

If marital consent were exchanged by means of a private letter or document, such a writing would afford only as much proof as the judge would attribute to it. If the letter were both genuine and credible, a judge, according to his discretion and in accord with the circumstances of the case, could attribute the force of full proof to it.[89]

[86] "In many of the American jurisdictions the assent of parties capable of contracting marriage is all that is required to a valid marriage and that consent need not be expressed before any religious or civil celebrant. In such a jurisdiction if two persons exchange letters wherein *per verba de praesenti* they take each other as husband and wife they are legally married." These words from an editorial in 22 Law Notes (1919) are quoted from Koegel, *Common Law Marriage*, 133.

[87] Koegel, *op. cit.*, p. 133.

[88] C. 1813, § 2: "Documenta publica civilia ea sunt quae secundum uniuscuiusque loci leges talia iure censentur."

C. 1816: "Documenta publica fidem faciunt de iis quae directe et principaliter in eisdem affirmantur."

[89] C. 1753; Wanenmacher, *Canonical Evidence in Matrimonial Cases*, n. 380, pp. 385-386; cf. *supra*, pp. 410-415.

If common law marriage is forbidden in a state, its legality in that state must be proved, not assumed; in such instances the burden of proof rests with the person who asserts the marriage. Furthermore, in such a state the status of marriage affords no presumption of validity for a marriage in the celebration of which there has been no compliance with the formal requisites of law.

Some states, while forbidding common law marriage within their jurisdiction, recognize the validity of such a union provided that the parties exchange consent in a state which does recognize common law marriage. Proof of this exchange of consent can be afforded by documentary evidence, by oral testimony, or by the presumption arising from the assumption of the marital status provided that this presumption is not overthrown by proof to the contrary.

If the civil law permits the sanation of an invalid marriage by the mere presence of the parties in a jurisdiction recognizing common law marriage, proof of this sanation entails the establishment of two facts, namely of the original marriage contract and of the presence of the parties in a territory recognizing common law marriage. If an invalidating impediment had caused the invalidity of the marriage which is now to be validated, proof must be adduced to show that the impediment has ceased to exist, or at least has ceased to bind the parties in this case, at the time when the sanation is effected.

If the law of a state permits either the contraction of a common law marriage or the validation of an invalid union through the continued cohabitation of the parties the ecclesiastical judge must consider the marriage status as he would that of baptized non-Catholics, as previously explained.[90] In other words, inasmuch as the marriage or its sanation is permissible at law, it will be presumed valid or sanated (as the case may be) as long as evidence is adduced to show that the parties have by word or by act accepted each other as man and wife in any jurisdiction recognizing common law marriage.

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[90] Cf. *supra*, pp. 420-421.

IGNORANCE OF THE FAITH IN RELATION TO MARRIAGE

NO one can seriously question the need of catechetical instruction for every Catholic, whether he ever intends to marry or not. In fact canon 752, §1, demands that an adult be thoroughly conversant with the doctrines of the Faith prior to his baptism, while §2 of the same canon prescribes that even in danger of death, before his baptism an adult who is not destitute of his senses must in some way manifest that he assents to the principal mysteries of the Faith and that he proposes to observe the precepts of the Christian religion.

When a person presents himself to a priest for the reception of some Sacrament other than baptism, the priest is not relieved of the obligation of ascertaining in a similar manner whether the person is thoroughly instructed in Christian Doctrine. In regard to confirmation, canon 786 notes that the person seeking it should be adequately instructed; canon 854, §3, lays down a similar norm in regard to first Holy Communion; and canon 1330, 1 and 2°, imposes on pastors the obligation of instructing children for the reception of confirmation, first Holy Communion and sacramental absolution.

It is not surprising then that persons seeking to receive the Sacrament of Matrimony should be required to be adequately instructed in the doctrines of the Faith. The general duty of the pastor to instruct the faithful regarding marriage is asserted in canon 1018 and the particular duty of doing so in regard to the parties contemplating an impending marriage is affirmed in canon 1033. Besides these norms, the Code, in canon 1020, §2, insists on a test of the knowledge of these parties in relation to Christian Doctrine and on adequate instruction if they are found to labor under any degree of ignorance in that regard.

A specific problem arises under this rule in the case in which the parties cannot or will not acquire the knowledge required of them. If the instruction demanded as a prerequisite should constitute an impediment to the marriage, then the pastor would be compelled to seek a dispensation or to refuse to assist at their marriage. These results would not follow if the norm operated merely to bind the pastor to make every effort to provide them with adequate instruction.

A hint as to the proper classification of this rule derives from the case in which the parties cannot acquire the requisite knowledge. In this case, their failure to be equipped with it is owing to no fault of their own. Of course, it is entirely possible also that in the case in which the parties refuse to take instructions, they may, for subjective reasons, be free of moral responsibility, at least free of that degree of it which would constitute a grave sin.

Now if a thorough knowledge of Christian Doctrine were so required as a prerequisite to marriage that its absence constituted an impediment, it would follow that it is irrelevant to study the moral responsibility in reference to it. The Code does not distinguish between matrimonial impediments *ex defectu* and those *ex delicto;* this distinction is reserved for the irregularities affecting the Sacrament of Orders. In those matrimonial impediments in which a foundation of culpability is apparent, the lack of culpability is irrelevant so far as the existence of the impediment is concerned.

In so far, then, as the inculpability of a party permits him now, or permitted him under pre-Code law, to enter marriage, the obstacle that thus is or was made to depend on his culpability cannot, and could not, be called a matrimonial impediment.

Before, however, attempting to determine the category in which to place the rule demanding the instruction of parties contemplating marriage, it seems indicated to preface at this point a brief glance at the norm as it existed in pre-Code law.

It was with the Council of Trent that universal ecclesiastical legislation came to concern itself systematically with the instruction of the faithful. The reason for this solicitude is a historical one so obvious as to make elaboration superflous. The regulations of that Council became the prototype for the subsequent enactments on this subject.[1] Among the first fruits of this legislation was the *Catechism of the Council of Trent,* composed by a committee of Cardinals and theologians under the guidance of St. Charles Borromeo (1538-1584) and completed in 1564.

It was under the impetus of this legislative program that the eyes of legislators in provincial councils turned to the celebration of the Sacrament of Matrimony as an auspicious opportunity for the individual application of their enactments in regard to catechetical instruction.[2] No argument was needed to demonstrate the need of adequate knowledge concerning any Sacrament in order to establish one's qualifications to receive it. It was also apparent that in the case of the Sacrament of Matrimony this was particularly and more specifically true in view of the parental responsibility that would be its natural sequel.

In accordance with this axiomatic conviction, the V Council of Milan (1579) provided that persons completely ignorant of the rudiments of Christian Doctrine should be restrained from contracting marriage until they had become familiar with them to the extent expected of persons of their intellectual capacity.[3] In other provincial councils the permission of the bishop was imposed as a preliminary requirement for the marriage of persons ignorant of the rudiments of Christian Doctrine,[4] but the legislation of others, especial-

[1] Jansen, *Canonical Provisions for Catechetical Instruction,* The Catholic University of America Canon Law Studies, n. 107 (Washington, D. C.: The Catholic University of America, 1937), p. 23.

[2] Cf. Conc. Trident., sess. XXIV, *de ref.,* c. 7.

[3] Pars III, XVII—Mansi, XXXIV, 480.

[4] Cf. Council of Siena (1599)—Mansi, XXXVI bis, 541.

ly in Belgium, was only hortatory;[5] indeed, this was the tone of the direction of the Roman Ritual of Pope Paul V, published in 1614.[6] On the other hand, on June 11, 1697, the Sacred Congregation of the Inquisition prohibited the proclamation of the banns of parties ignorant of the rudiments of Christian Doctrine and its decree was confirmed by Clement XI in 1713.[7] The value of the occasion of marriage as one admirably suited for catechetical instruction came thereafter to be so universally appreciated that even the re-united Ruthenians in their Provincial Synod of Zamosc (1720) enacted legislation prohibiting the admission to marriage of those ignorant of the doctrines of the Faith.[8]

The decree of 1697 was invoked by Benedict XIV while he was Cardinal Archbishop of Bologna as support for his archdiocesan decree forbidding the publication of the banns of those ignorant of the rudiments of the Faith.[9] Indeed, he spoke of this ignorance as an impediment and required that in every such case the archbishop or the vicar general should be consulted.[10] As Pope, however, he argued against Sanchez (1550-1610) that the prohibition was obligatory even though it did not constitute a matrimonial impediment.[11] It was the

[5] Cf. Synod of Malines (1609)—Schannat-Hartzheim-Scholl, *Concilia Germaniae* (11 vols., Coloniae Augustae Agrippensium, 1759-1790), IX, 9.

[6] Tit. VII, c. 1, *de sacramento matrimonii,* n. 1, 10.

[7] Cf. Benedict XIV, *De Synodo Dioecesana* (2 vols., Parmae, 1764), lib. VIII, c. 14, n. 3; Donovan, *The Pastor's Obligation in Pre-Nuptial Investigation,* The Catholic University of America Canon Law Studies, n. 115 (Washington, D. C.: The Catholic University of America, 1938), p. 45.

[8] Mansi, XXXV, 1503.

[9] Benedict XIV, *Institutiones Ecclesiasticae* (3 vols., Romae, 1784), Institutio IX, n. XII.

[10] *Institutiones Ecclesiasticae,* Institutio XLVI, n. XVI.

[11] *De Synodo Dioecesana, ibid.,* n. 5. In his encyclical letter, "*Etsi minime*" (February 7, 1742), he required pastors to refrain from assisting at the marriage of those who were ignorant of the truths *necessary for salvation,* insisting that bishops must warn pastors of their obligation and impose penalties on negligent pastors (n. 11)—*Fontes,* n. 324. In his constitution, "*Firmandis*"

view of Sanchez that the prohibition of marriage deriving from the ignorance of the doctrines of the Faith on the part of the persons contemplating marriage did not constitute an impediment of the universal law, while he emphasized the acknowledged doctrine that impediments cannot be established by episcopal law.[12] Pope Benedict, in arguing for the correction of this doctrine as opposed to the common opinion and practice of the Church, defended the competence of episcopal law to enact this prohibition, explaining that in so doing it would not be establishing a new matrimonial impediment. Such an enactment, he averred, would be merely a positive declaration that the parties were by divine law restrained from the sacrilegious reception of a Sacrament of the Living because they were in the state of mortal sin resulting from their culpable ignorance of the rudiments of the Faith which by precept they are bound to know, and that the pastor was similarly forbidden by his presence to sanction their action. He compared the prohibition to a bishop's order to defer the marriage for the purpose of further investigation of the freedom of the parties. He insisted that it is only the recalcitrancy of the parties in refusing to receive instruction that changes the deferral from a temporary one into a permanent one.[13] The very foundation on which his argument rested obviously compelled him to make an exception for those not responsible for their ignorance; thus he could not but admit that those who are so weak in memory or dull of intellect that they cannot memorize or repeat the requisite prayers and doctrines were to be only temporarily

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(November 6, 1744), he referred to the obligation of the bishop at the time of the parochial visitation to interrogate the pastor on his diligence in inquiring about the knowledge of the principal mysteries of the Faith possessed by parties contemplating marriage (n. 9)—*Fontes*, n. 349.

[12] Sanchez, *De Sancto Matrimonii Sacramento Disputationum Tomi Tres* (Lugduni, 1669), Lib. III, disp. 15, n. 19.

[13] Benedict XIV, *ibid.*, n. 6. The knowledge of the parties must include, he affirmed, the Lord's Prayer, the Apostles' Creed, the Commandments of God, and the Precepts of the Church.

restrained, *i.e.*, long enough to make a serious effort to impart to them as much knowledge as they could absorb and to require of them the recitation of as much as their memory could retain.

In his official documents, however, Pope Benedict seems to have restricted his prohibition to the case of those who were ignorant of the truths the knowledge of which is necessary to salvation.[14] In 1791, the I Synod of Baltimore adopted the prohibition, but imposed it only on the case in which the parties did not possess a knowledge of the principal truths of the Faith.[15]. In this it had the warrant of Pope Benedict's authority, as well as that of St. Alphonsus,[16] who cited the same enactments as those on which Pope Benedict relied, inclusive of the encyclical letter of the latter, "*Etsi minime*".

In spite of a reference to this doctrine of St. Alphonsus made in a response of the Sacred Penitentiary on December 10, 1860,[17] a continuation of the relaxation of the rigorous application of the prohibition begun some years earlier, is discernible in the exhortatory tone of the legislation of provincial councils. On the other hand, writing before the Code, Gasparri and De Becker listed as a prohibitory impediment to marriage ignorance of the rudiments of the Faith.[18] But the tone of the legislation of the III Plenary Council of Baltimore is hortatory.[19] Moreover, the Roman Ritual issued by Pope Pius X in 1903 contained a provision in this regard

[14] Cf. litt. encycl. "*Etsi minime,*" 7 febr. 1742, n. 11—*Fontes,* n. 324; litt. encycl. "*Cum religiosi,*" 26 iun. 1754, n. 4—*Fontes,* n. 429.

[15] Sess. IV, c. 15—*Coll. Lacensis,* III, 4.

[16] *Theologia Moralis* (ed. Gaudé, 4 vols., Romae, 1905-1912), lib. VI, n. 54.

[17] *Fontes,* n. 6426.

[18] Gasparri, *Tractatus Canonicus de Matrimonio* (3. ed., 2 vols., Paris, 1904), I, n. 476, p. 326; n. 537, p. 368; De Becker, *De Sponsalibus et Matrimonio Prelectiones Canonicae* (2. ed., Lovanii, 1903), pp. 246, 272-274.

[19] *Acta,* n. 125.

that was also hortatory,[20] and that issued in 1925 by Pope Pius XI conforms to the terminology of canon 1020, §2, in this respect.

This canon completely omits all reference to the prohibiting or the postponement of the marriage of persons not sufficiently instructed in the rudiments of the Faith. Furthermore, canons 1058-1080 made no reference to such ignorance in listing the matrimonial impediments. Finally, the Code Commission replied to a doubt in this matter indicating that the refusal of the parties to take instructions did not of itself make them public sinners and that the pastor was not to refuse to assist at their marriage.[21] This was re-affirmed by the Instruction of 1941 on prenuptial investigation.[22]

One hesitates to dismiss the subject without asking whether ignorance of Christian Doctrine was ever an impediment of the universal law. Prior to Benedict XIV there existed the decree of the Sacred Congregation of the Inquisition issued on June 11, 1697, at a meeting held in the presence of Innocent XII, a decree confirmed by Clement XI on September 13, 1713. But the manner in which Benedict XIV considered bishops as authorized to defer marriage because of the ignorance of the parties is hardly consistent with the view that he regarded this prohibition as an impediment, much less an impediment of the universal Church. Indeed, in considering that the whole matter was susceptible to the bishop's control, he seems to have admitted that there was no general ecclesiastical prohibition as such but that such general legislation as existed was only a statement of the divine law forbidding sacrilegious marriage. Mark well that these conclusions are drawn on the basis of his treatment of the subject in his *De Synodo Dioecesana*, a work written while

[20] Tit. VII, c. 1, *de sacramento matrimonii*, n. 1, 10.

[21] Code Commission, 3 iun. 1918, IV, 3—*AAS*. X (1918), 345; Bouscaren, *The Canon Law Digest*, I, 496, 497.

[22] S. C. de Sacramentis, instr. 29 iun. 1941, n. 8—cf. Bouscaren, *The Canon Law Digest*, II, 261.

he was Pope and published later than the date of his own encyclical letter, "*Etsi minime*" (February 7, 1742), in which he insisted that pastors should refrain from assisting at the marriage of those ignorant of the truths the knowledge of which was necessary for salvation.

If the prohibition, whether general or particular, if not an impediment, was nevertheless a declaration of the prohibition of the divine law, the question is pertinent how it can be that the divine law does not now forbid the assistance of the pastor at the marriage of these parties. Clearly, the divine law forbids the reception of the Sacrament of Matrimony in the state of mortal sin, but it does not require that the state of grace be previously recovered through sacramental confession. The relaxation that began in the middle of the last century and culminated in the Code and its interpretation by the Code Commission was perhaps due to the fact that ignorance of the truths of Faith can be less than a mortal sin even when it seems to be culpable, as in the case of a refusal of instructions. Benedict XIV was compelled to admit this freedom from culpability in the case of those whose intellect was too dull or whose memory was too weak to permit them to pass a satisfactory test in this respect. But even he whose intellect is good may suffer blindness from prejudice or lethargy. Even after he is told of his obligation to take instructions the obligation may not seem so clear to him as it does to the priest who instructs him. For that reason it savors of rash judgment to conclude that a person who refuses instruction in Christian Doctrine has, by that fact, turned his back on God. The judgment is, of course, not rash, since there is good reason, in the ordinary case, for making such a conclusion. But in the specific case, it seems that only a confessor could determine whether the party intended to enter marriage sacrilegiously because of his rejection of catechetical instruction.

Of course, the Church could prescind from the internal forum and make this ignorance an impediment. But even

Benedict XIV seems to have indicated that the Church did not do so, since he placed the whole ground for his prohibition on the state of the soul of the party entering marriage.

As a consequence it seems a warranted conclusion to say that under the Code, the law asserts an obligation that is placed squarely upon the pastor, and not upon the party contemplating marriage. Unless the latter's ignorance is sufficient to constitute him a public sinner, it does not bar his admission to the reception of the Sacrament of Matrimony.

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FREEDOM FOR ATHEISTIC SPEECH

The Federal Communications Commission's ruling of 1946 favoring the freedom of atheistic speech is under investigation by the Harness Committee of Congress. The decision involved held "that preservation of freedom of speech in the public domain of the radio precluded a licensee from absolutely barring subjects of discussion over the radio, including atheism, on the ground that any presentation, whatever its nature, would be contrary to the public interest." This position was adopted, according to Commissioner Rosel H. Hyde, because "it would be manifestly dangerous and inconsistent with our traditions of separation of Church and state and the free exercise of religion to give religious organizations a preferred status on the radio." Rev. Edmund A. Walsh, S.J., Vice President of Georgetown University, appeared before the investigating Committee to argue that there is "no constitutional guarantee of freedom to undermine the public welfare". He averred that "every deliberate assault on the religious nature of man is a disservice to American democracy".

Cases and Studies

ANNUITY CAPITAL INVESTMENT

A religious organization has accepted annuity obligations of about 150,000. Of this sum about $85,000 would cover all the payments of annual returns to the annuitants. Could the superior of the organization make use of the anticipated profits estimated to be about $50,000 and loan this sum of money to the superior of one of his houses for a building project?

Would this procedure be contrary to the letter of the Apostolic Delegate of 1936? I personally feel hesitant in answering the question in the negative, since investing the anticipated profit is not contrary to the mind of the annuitants. And after all the annuities are given for the purpose of securing some funds for operation.

PRAEPOPERUS

In reference to the question proposed, the solution seems apparent from a refusal to accept the designation of anticipated profits as descriptive of the capital. One is not justified in calling capital by the name profits. It is true that eventually the profits will total fifty thousand dollars. But until the profits are realized they are non-existent. The only thing that exists is the capital. Now it is precisely the capital sum which the letter of the Most Reverend Apostolic Delegate strictly and formally forbids to be used as long as the annuitant is living.[1]

Of course, investment is not forbidden, since it is understood that the capital will bring in money with which to pay the annuitant. However, the same letter of the Most Reverend Apostolic Delegate requires that the Sacred Congregation of Religious, when it is asked for permission to accept annuities, shall be informed in detail of the plan of investing the capital and of meeting the annual payments. It seems, therefore, that the permission of the Sacred Congregation, when given, is limited by the plan submitted. As a consequence, any modification of that plan would need the approval of the Sacred Congregation. Certainly so bad an investment as that involved in the inbreeding practice of lending the capital to a house of the same community would seem beyond doubt to require the approval of the Sacred Congregation. In making this

[1] Letter, 13 nov. 1936—Bouscaren, *The Canon Law Digest*, II, 165.

statement one includes also the case in which the rate of interest paid by the recipient of the loan is as great as that which could be obtained in the open market.

Moreover, the house which does the borrowing is bound to obtain the permission of the Sacred Congregation in order to burden itself with the responsibility of the debt. The mere fact that the debt is owed to a corporate personality within the same religious institute does not relieve it of this obligation.

If the institute is intent upon making this loan, let it write to the Sacred Congregation, as it seems obliged to do. The mere fact that the Sacred Congregation wishes to exercise control over situations of this kind is no reason why it should not be allowed to give an affirmative answer, even though a negative answer might seem to be the one more probably to be expected.

WONDER AT THE BELLS

I am told that in the moving picture, "The Miracle of the Bells," an enterprising press agent manages to persuade all the Catholic pastors of a small town to toll their church bells during the whole time that a dead moving picture actress was being waked. Would such a procedure have been lawful had it actually occurred in fact?

OBTUSUS

The ringing of bells that have been dedicated to liturgical purposes by a blessing or a consecration is subject to ecclesiastical authority.[1] Augustine observes that the local Ordinary has the sole control of the use of these bells.[2]

[1] Can. 1169, § 1. Cuilibet ecclesiae campanas esse convenit, quibus fideles ad divina officia aliosque religionis actus invitentur.

§ 2. Etiam ecclesiarum campanae debent consecrari vel benedici secundum ritus in probatis liturgicis libris traditos.

§ 3. Earum usus unice subest ecclesiasticae auctoritati.

§ 4. Salvis conditionibus, probante Ordinario, appositis ab illis qui campanam ecclesiae forte dederint, campana benedicta ad usus mere profanos adhiberi nequit, nisi ex causa necessitatis aut ex licentia Ordinarii aut denique ex legitima consuetudine.

§ 5. Quod ad campanarum consecrationem vel benedictionem attinet, servetur praescriptum can. 1155, 1156.

[2] *A Commentary on the New Code of Canon Law*, VI (3. ed., St. Louis: B. Herder, 1931), 31, 32.

The police would be warranted in preventing any disturbing non-liturgical use of church bells. Of course, from their point of view, they would feel themselves warranted also in preventing a liturgical use if it proved disturbing to the peace of the town.

Is the constant tolling of the church bell for a deceased person a liturgical use of the bells? It seems not. Though the tolling of the bells for the deceased is in itself a liturgical use, the method and the time of the tolling can be non-liturgical. Would anyone say that the tolling of the bell throughout the night could by any stretch of the imagination be called liturgical? Moreover, since the tolling of the bells is forbidden on the last three days of Holy Week,[3] the tolling of the bells on those days could hardly be called liturgical, even though done for an otherwise liturgical purpose.

Since the constant tolling of the bells seems to be non-liturgical as to the method and time, it seems right to conclude that the permission of the local Ordinary was needed, in virtue of canon 1169, § 4. One could scarcely say there was a legitimate custom of tolling the bells in that fashion.

In 1931, the Sacred Congregation of the Council issued a decree in which it stated that certain Ordinaries had reported that some pastors are too readily inclined or too easily persuaded to permit the bells of their churches to be used for non-liturgical purposes. For that reason it insisted on the necessity of the permission of the local Ordinary, in the absence of an emergency (*v.g.*, a flood) or a lawful custom. It provided that local Ordinaries should enact penalties for disobedience in this matter and requested that they report violators of the law to the Sacred Congregation.[4]

A MARRYING JUSTICE

A Catholic justice of the peace of my parish insists on marrying Catholics who come to him in spite of the fact that our local Ordinary has given him a mandate to refrain from doing so under penalty of automatic excommunication. No reservation of the excommunication was made. This man insists on coming to Holy Communion with the Holy Name Society. So far I have

[3] Coronata, *Institutiones Iuris Canonici,* II (2. ed., Taurini-Romae: Marietti, 1939), n. 746.

[4] S.C.C., decr. 20 mart. 1931—*AAS,* XXIII (1931), 129; Bouscaren, *The Canon Law Digest,* I, 562.

not turned him away, but I have been worried by the thought that even though he should be absolved from the excommunication by his confessor, the absolution might be invalid because of his continuing contumacy; or that even if the absolution is valid, he should be regarded as manifestly notorious and thus excluded from the reception of Holy Communion.

IUSTICIARIUS

It is supposed that the mandate was given by the bishop or that, if the vicar general issued it, the latter had a special mandate to do so.[1]

Now any reason which excuses a person from grave sin, excuses him also from the penalty attached to it.[2]

In a case tried before the Rota in 1924 it was held that a Catholic civil magistrate thus officiating did not incur an excommunication that was imposed by local decree on all who participated in a civil marriage of Catholics. And the reason was that he was excused from grave sin because safe moral doctrine holds that a civil magistrate assisting at such a marriage acts lawfully if certain conditions are verified: 1) that his cooperation is not formal; 2) that scandal is avoided; 3) that there is a proportionately grave reason. The grave reason was found to consist in the probability that the official would lose his office if he refused his assistance. That there was no scandal was concluded from the fact that even the Concordat with the government where the act occurred did not absolutely exclude civil marriage in the case of lapsed Catholics such as were the two involved in the case.[3]

This precedent leaves open, however, the question of the verification of all the conditions in a given case. Particularly the question of the avoidance of scandal is one that depends in large measure on the judgment of the bishop. The fact that he has issued a mandate in the given case is a strong presumption that the justice of the peace cannot act without giving scandal. It may be that an explanation could be given the people to show that he does not cooperate formally and that he is moved by a sufficiently grave reason, the

[1] Can. 2220, § 2. Vicarius Generalis sine speciali mandato non habet potestatem infligendi poenas.

[2] Can. 2218, § 2. Non solum quae ab omni imputabilitate excusant, sed etiam quae a gravi, excusant pariter a qualibet poena tum latae tum ferendae sententiae etiam in foro externo, si pro foro externo excusatio evincatur.

[3] Cf. S.R.R., *Medellen. Excommunicationis,* 7 iul. 1924, coram R.P.D. Maximo Massimi, Pro-Decano—*Decisiones,* XVI (1924), 284.

necessity of retaining his office or of securing re-election. If this explanation is sufficient to enlighten the people so that they understand his position as one that does not imply defiance of the Church, it seems that scandal could be averted.

The pastor should not be moved by the fear of the invalidity of the absolution from the excommunication. The confessor is surely the better judge of the continuing contumacy of the penitent. However, unless the scandal is removed or averted, it seems that this man is in as bad a case as a blasphemer; and in the pre-Code edition of the Roman Ritual, which published as an example a list of those who were to be excluded from the public reception of Holy Communion, blasphemers were listed in the category of manifestly infamous persons.

COMMUNION OF THE UNWORTHY BEFORE THE SIN

A Catholic young man of my parish wished to contract marriage with an Episcopalian who refused to sign the promises. I came to know that they had agreed to attempt marriage in the young woman's home before a judge of the county court. What was my surprise, then, to find the man and his parents together at the communion rail on the morning of the day on which according to my knowledge the ceremony had been scheduled. Notice of the proposed attempt at marriage had not been published in the newspapers, but invitations had been sent to a number of Catholics of the parish. I gave them Holy Communion, deciding on the spur of the moment that their very presence at the rail indicated that they were too stupid to be aware of their unworthiness. Should I have acted otherwise?

ASTRICTUS

The parents of the young man were not in exactly the same state as the young man himself, though it is hard to see that they were not involved in his proposed attempt. Their very presence with him at the altar rail would seem to make them parties, as it were, to the conspiracy. But even so, it appears that the offense remained, at the time the parties approached the communion rail, a purely internal one. It consisted in their proposal to perform a sacrilegious act.

Now it is only external offenses that are subject to punishment under the penal law of the Code.[1] And the offense becomes subject

[1] Cf. can. 2195, § 1. Nomine delicti, iure ecclesiastico, intelligitur externa et moraliter imputabilis legis violatio, cui addita sit sanctio canonica saltem indeterminata.

to the penalty only when it is completed.[2] Indeed, it is even doubtful whether the preparations made for the wedding constitute an attempted delict.[3] The sending of the invitations seems to have no specific relation to a sacrilegious attempt. Of course, the arrangement with the county court judge does involve at least a remote commitment to go through with the offense. In any event, it seems that in the strict juridical sense one cannot talk of the existence of an attempted delict in a case in which the delict itself was subsequently carried through.

But the mandate of canon 855 cannot, it seems, be limited by the definitions of the penal law of the Code.[4] The Roman Ritual, containing an analogous prohibition,[5] now omits the list given in the pre-Code edition of the Ritual, which enumerated among the manifestly infamous, prostitutes, usurers, sorcerers, blasphemers, and persons living in concubinage.

Though not limited by the definitions of the penal law, it seems clear that a person is not manifestly infamous in the sense of canon 855 unless his offense has been completed externally.

Therefore, even though the young man had not given up his plan to attempt marriage before approaching the communion rail, it seems that he could not be publicly refused Holy Communion unless it would have given scandal to give It to him. In spite of the invitations sent to members of the parish, it is probable that in a large parish there would be no scandal. It might be otherwise in a small parish. But even there it is likely that the very approach to the communion rail would act as an indication that the young man had desisted from his evil purpose and had repented.

If there is doubt about the notoriety of the proposed offense or about the young man's having given up his plan, he is to be favored.

[2] Can. 2228. Poena lege statuta non incurritur, nisi delictum fuerit in suo genere perfectum secundum proprietatem verborum legis.

[3] Can. 2212, § 1. Quicumque actus posuerit praetermiserit qui ad executionem delicti natura sua conducunt, sed delictum non consummaverit, sive quia consilium suum deseruit, sive quia delictum propter insufficientiam vel ineptitudinem mediorum perficere non potuit, *delicti conatum* committit.

[4] Can. 855, § 1. Arcendi sunt ab Eucharistia publici indigni, quales sunt excommunicati, interdicti manifestoque infames, nisi de eorum poenitentia et emendatione constet et publico scandalo prius satisfecerint.

[5] Tit. IV, c. 1, *de sanctissimo Eucharistiae sacramento*, n. 8.

Even though he carried out his plan later in the day and even though the parishioners should come to learn both of this and of the fact that he received Holy Communion in the morning, it seems that less scandal would result than if he were turned away from the altar. There is something dramatically tragic about this action that gives it emphasis and makes it live long on the tongues and in the memories of those who witnessed it. It should, therefore, be avoided, it seems, unless it is made necessary by the fact that the administration of Holy Communion would be abhorrent to the religious sensibilities of the persons who witness it.

Of course, if the young man approached the pastor privately, the latter could and should refuse to give him Holy Communion until he was morally certain that he had given up his plan.[6]

REPARATION OF SCANDAL AND HOLY COMMUNION

A Catholic man and a Catholic woman of my parish, both approaching the age of seventy years, have been living in an invalid union for some twenty years. The first wife of the man is still living and she is ten years younger than he is. The man and woman cannot bring themselves to separate, but they agree not to sin. Can they be admitted to the reception of Holy Communion, even though it is well known in the parish that the man's first wife is still living?

HYPAETHRUS

Canon 855, § 1, requires that those who are manifestly infamous must be restrained from receiving Holy Communion unless it is clear that they have repented and unless they have made adequate reparation of the scandal they have given. Moreover, in the pre-Code edition of the Roman Ritual persons living in concubinage were enumerated among those who were manifestly infamous in the sense of canon 855, § 1.

A private solution of a case of this kind was rendered by the Sacred Congregation of the Council in 1922.[1] The facts of the case

[6] Can. 855, § 2. Occultos vero peccatores, si occulte petant et eos non emendatos agnoverit, minister repellat; non autem, si publice petant et sine scandalo ipsos praeterire nequeat.

[1] S.C.C., 18 nov. 1922—Bouscaren, *The Canon Law Digest*, I, 408, 409.

showed that a missionary admitted to the reception of Holy Communion, after hearing her confession, a woman who was living in open concubinage with a relative. This was unacceptable to the pastor who reported the incident to the local Ordinary. The latter, in turn, reversed the decision of the missionary and forbade that Holy Communion be given the woman until she separated from the man with whom she was living. The case came to the Sacred Congregation through the recourse interposed by the mission-confessor. The solution was that the authority of the local Ordinary is paramount in the external forum in determining the question involved.

The administration of Holy Communion to persons living in concubinage or to other manifestly infamous persons is abhorrent because the conscience of the public is affronted by the conflict between the public state of the recipient and the holiness demanded by the reverence due the Sacrament. Continued cohabitation makes the theory of repentance publicly unacceptable. It is of the public acceptance of repentance that the minister of Holy Communion must judge and it is on this likewise that the local Ordinary must render his decision. Even in danger of death, Holy Viaticum cannot be administered to a dying man unless he either marries his concubine or, if that is impossible, repudiates her in the presence of witnesses or, at the very least, authorizes the confessor to make known the fact of his repentance and of his repudiation.[2]

While the promise to repair the scandal would suffice to permit the private administration of Holy Communion (*i.e.*, without the knowledge of the public) to a truly repentant person, it is hard to understand how that promise can be consistent with the intention to continue cohabitation under the same roof, even though it be without sin. The same should be said of the administration of Holy Communion to him in a church distant from the place of cohabitation, *i.e.*, in a parish in which scandal has not been given. In these two situations the crux of the problem is not the scandal incident to the reception of Holy Communion by a manifestly infamous person, but the continuing scandal in the place of cohabitation. Only if that can and will be removed, can the promise of the penitent be accepted as sufficient to permit the administration of Holy Communion to him.

[2] Cf. Vermeersch-Creusen, *Epitome Iuris Canonici,* II (6. ed., Mechliniae: H. Dessain, 1940), n. 117; Coronata, *De Sacramentis,* I (Taurini-Romae: Marietti, 1943), n. 313.

COMMUNION DURING CHANTED REQUIEM MASS

The other day I found my assistant, ordained in June, distributing Holy Communion to about sixty communicants at the end of the Requiem Mass which he had just chanted. I was greatly surprised to hear his explanation. Since his ordination he has been telling the communicants present at the Requiem Masses he has chanted to wait till the end of Mass before approaching the communion rail. He alleges that a reasonable cause is needed to distribute Holy Communion during a chanted Requiem Mass and that he did not think there was sufficient reason to do so day after day, as had been our practice. What justification is there for his position?

POSTILLA

This assistant has probably heard of the response of the Sacred Congregation of Rites issued November 28, 1902,[1] in which it responded to a question regarding the chanting of the *Confiteor* by the deacon in a solemn Requiem Mass. The response noted that in Rome Holy Communion is not distributed during a solemn or a chanted Requiem Mass, but that in case a justifying reason should intervene to permit the distribution of Holy Communion during a solemn Requiem Mass, the *Confiteor* should be chanted or recited in a high tone according to the local practice.

Cappello adverts to this response but declares that no longer is there required any special justifying reason to permit the distribution of Holy Communion during any kind of Mass, inasmuch as canon 846, § 1, makes no distinction of this sort.[2]

But even if a justifying reason is needed, one should consider that it exists in the case in which there are assisting at the chanted Requiem Mass persons who wish to receive Holy Communion during the Mass.

DISTRIBUTION OF HOLY COMMUNION IN BLACK VESTMENTS

As I read the last Gospel of my Mass, a request was made through an altar boy by a parishioner, who had to leave for work before the next Mass, that I give him Holy Communion immediately after my Mass. I did so. I was wearing black vestments, for the Mass which I had just celebrated was a

[1] *Decreta Authentica,* n. 4104, ad. II.

[2] Cf. *Cappello, Tractatus Canonico-Moralis De Sacramentis,* I (4. ed., Romae: Marietti, 1945), n. 299, 2.

Requiem Mass. When the pastor heard of this, he told me this was forbidden and that I should never do it again, at least not so long as I was his assistant. Was I wrong?

SCATURIGO

Canon 846, § 1, authorizes any priest to distribute Holy Communion immediately before or after a privately celebrated Mass.[1] A privately celebrated Mass is one that is not a solemn Mass, a chanted Mass, or a conventual Mass.[2] When Holy Communion is distributed by a priest wearing black vestments, the blessing is not given after the ciborium is placed back in the tabernacle, and during the Paschal Season, *Alleluia* is not said in connection with the prayers following the distribution of Holy Communion.[3]

In the given case, however, the assistant would be well advised to comply with the pastor's request. It is one thing for the pastor to forbid the assistant to distribute Holy Communion after Mass, irrespective of circumstances.[4] This only the local Ordinary could do in virtue of canon 869; and even he would need a sound reason to do so. But it is quite another for the pastor to request that Holy Communion be not distributed in black vestments. It is a slight inconvenience that would require the assistant to remove the black vestments before proceeding to the distribution of Holy Communion.

It should be noted that when Holy Communion is distributed immediately after low Mass, the prayers prescribed for recitation after low Mass must be said before the distribution of Holy Communion.[5] The administration of Holy Communion is not such a function as would permit the omission of the prayers within the concession of the decree of June 20, 1913.[6]

[1] Can. 846, § 1. Quilibet sacerdos intra Missam et, si privatim celebrat, etiam proxime ante et statim post, sacram communionem ministrare potest, salvo praescripto can. 869.

Can. 869. Sacra communio distribui potest ubicumque Missam celebrare licet, etiam in oratorio privato, nisi loci Ordinarius, iustis de causis, in casibus particularibus id prohibuerit.

[2] Cf. S.R.C., decr. 19 ian. 1906, ad III—*Decreta Authentica*, n. 4177.

[3] Cf. Rituale Rom., tit. IV, c. 2, *Ordo administrandi sacram communionem*, n. 13.

[4] Cf. S.R.C., decr. 7 dec. 1844—Gardellini, *Decreta*, n. 4984; in this decree a pastor's prohibition of this kind was censured.

[5] S.R.C., 25 nov. 1932—Bouscaren, *The Canon Law Digest*, II, 195, 196.

[6] S.R.C., decr. 20 iun. 1913—*Decreta Authentica*, n. 4305.

COMMUNION OF THE SICK IN PIOUS HOUSES

At the mother house of a congregation of Sisters where I am stationed, there are always one or two Sisters who are chronically ill. There has grown up a custom of carrying daily Holy Communion to these Sisters privately. I have insisted on carrying It publicly, though the matter has caused some resentment. Have I acted wisely and should I continue in the course I have taken?

ACER

It is the pastor's prerogative to carry Holy Communion publicly to the sick.[1] If the local Ordinary has given the chaplain a pastor's rights and obligations in regard to the Sacraments, the chaplain automatically has this right.[2] But in any event, it seems that he may reasonably presume the pastor's permission, and this suffices under the provision of canon 848, § 2.

To carry the Blessed Sacrament privately to the sick, there is needed the presumed permission of the priest to whom is entrusted the custody of the Blessed Sacrament.[3] In the case as stated it can readily be supposed that the chaplain is the priest to whose care is entrusted the custody of the Blessed Sacrament in the chapel of the mother house.

No serious problem of rights, then, confronts the chaplain whether he carries the Blessed Sacrament publicly or privately to the sick Sisters in the mother house. But is he exempted from carrying It publicly?

Canon 847 requires that Holy Communion be carried to the sick publicly unless a sound justifying reason permit It to be carried

[1] Can. 848, § 1. Ius et officium sacram communionem publice ad infirmos etiam non paroecianos extra ecclesiam deferendi, pertinet ad parochum intra suum territorium.

§ 2. Ceteri sacerdotes id possunt in casu tantum necessitatis aut de licentia saltem praesumpta eiusdem parochi vel Ordinarii.

[2] Cf. can. 514, § 3. In alia religione laicali hoc ius et officium [Eucharisticum Viaticum et extremam unctionem ministrandi] spectat ad parochum loci vel ad cappellanum quem Ordinarius parocho suffecerit ad normam can. 464, § 2.

Can. 464, § 2. Potest Episcopus iusta et gravi de causa religiosas familias et pios domos, quae in paroeciae territorio sint et a iure non exemptae, a parochi cura subducere.

[3] Can. 849, § 1. Communionem privatim ad infirmos quilibet sacerdos deferre potest, de venia saltem praesumpta sacerdotis, cui custodia sanctissimi Sacramenti commissa est.

privately. Does a sound justifying reason permit as a practice the private carrying of Holy Communion to the sick in a convent? The reason assigned by the II Plenary Council of Baltimore [4] for the private carrying of the Blessed Sacrament to the sick in this country does not seem generally applicable to the case in which the minister does not leave the precincts of the pious house.[5]

The chaplain in the given case is confronted by resentment. Since he has begun to carry the Blessed Sacrament to the sick publicly, it seems advisable that he should continue to do so. Perhaps he was not as tactful as might have been desired in restoring the practice required by the law. Perhaps his tact and generosity in the future may remove the consequences of an infelicitous beginning.

LEAVING THE ALTAR TO DISTRIBUTE HOLY COMMUNION

The communion rail in our church is so long and the main altar is set so far back from the rail that when the celebrant is distributing Holy Communion at either end of the rail he cannot see the altar. Is it permissible for him to distribute Holy Communion to the faithful at the extremities of the rail?

LONGIUSCULUS

The prohibition of the law forbids the celebrant to distribute Holy Communion to the faithful who are so far distant from the altar that to distribute Holy Communion to them the celebrant would be obliged to lose sight of the altar.[1] Distance is emphasized in the terms of the prohibition; yet it would be unsound to make it the sole determining criterion. On the other hand, it seems that the law was using the ability to see the altar chiefly as a measuring rod. It is quite possible that a celebrant distributing Holy Communion might be right in front of the altar and only a few feet away from it, and still be unable to see it because of a pillar in his way. No one would conclude, it seems fair to say, that he would be forbidden to go to a communicant kneeling at that

[4] *Acta*, n. 264.

[5] Cf. Coronata, *De Sacramentis*, I, n. 298.

[1] Can. 868. Sacerdoti celebranti non licet Eucharistiam intra Missam distribuere fidelibus adeo distantibus ut ipse altare e conspectu amittat.

spot in order to give the latter Holy Communion. And this conclusion seems to afford the proper solution of the given case.[2]

On the other hand, distance seems irrelevant in the case in which the celebrant would be obliged to leave a chapel, no matter how small, if in doing so he should lose sight of the altar.[3]

HOLY COMMUNION DURING FORTY HOURS

In the mother house at which I am chaplain, the chapel is so small that there is only one altar. We are soon to observe the Forty Hours' Devotion. I am wondering how I can solve the problem of celebrating Mass and distributing Holy Communion, since it is forbidden to do either at an altar at which the Blessed Sacrament is exposed. The Sisters tell me that chaplains in the past simply considered that in their situation a case of necessity was involved.

CENTRIFUGUS

The Sacred Congregation of Rites was asked a similar question shortly after the publication of the Code, and, after consulting a Special Commission, replied that the requirements of the decree of May 11, 1878, should be observed.[1] That decree had forbidden the acts involved in this case except in a case of necessity or for a serious justifying reason or in virtue of a special indult. The case of need was interpreted in regard to a specified situation in a decree of 1880 in which it was stated that there was no case of need even in rural sections where the side altars are so small as to result in an appearance of irreverence if the Blessed Sacrament were reserved in them for distribution at Communion time. It suggested that a

[2] Cf. Van Hove, *De Sanctissima Eucharistia* (2. ed., Mechliniae: H. Dessain, 1941), p. 162.

[3] Cf. Van Hove, *loc. cit.;* Cappello, *De Sacramentis,* I, n. 376. Coronata (*De Sacramentis,* I, n. 338, footnote 8) thinks that can. 868 has not abrogated the ruling in S.R.C., decr. 7 febr. 1874—*Decreta Authentica,* n. 3322. According to that ruling the celebrant could carry Holy Communion to adjacent rooms so close that the voice of the celebrant of the Mass could be heard in them, provided that a canopy (*umbella*) was used.

[1] S.R.C., decr. 17 apr. 1919—*AAS,* XI (1919), 246; Bouscaren, *The Canon Law Digest,* I, 369. Cf. S.R.C., decr. 11 maii 1878, ad I—*Decreta Authentica,* n. 3448.

movable tabernacle be put in place and that the altar be protected by a temporary railing (*balaustra*).[2]

In the given case there are no altars at all outside the main one. This situation does seem to give rise to a real case of need. However, before the time for the next observance of the Forty Hours' Devotion, at least one side altar should be provided or efforts should be made to obtain an indult. One is not too sanguine about the prospects of obtaining the indult in view of the possibility of solving the problem by the building of another altar.

MULTIPLE RESERVATION OF THE BLESSED SACRAMENT

In our church it is customary to celebrate the parochial Masses on an altar in the middle of the church, while the altar of the Blessed Sacrament is at the north end of the church. On Sunday morning, before the first Mass, we carry the Blessed Sacrament from the altar where It is reserved to the altar in the middle of the church, in the tabernacle of which It is kept until the end of the last Mass, when It is carried back to the altar of reservation. Meantime, the luna with the large Host is reserved in the usual altar. I have begun to have some doubts about whether the Blessed Sacrament can be reserved in the tabernacles of two altars at the same time and whether, without necessity, it is permitted to carry the Blessed Sacrament from one place to another in the manner just described.

MONAS

It is true that canon 1268, § 1, forbids the continuous or habitual reservation of the Blessed Sacrament in more than one altar of the church. In 1878, however, the Sacred Congregation of Rites, in an exceptional case, required the reservation of the Blessed Sacrament in more than one altar; the case was that in which there is perpetual adoration at one altar. In that case it was required that the Blessed Sacrament should be reserved also in another altar.[1] But outside this case, Van Hove holds that though canon 1268 forbids the continuous reservation of the Blessed Sacrament in more than one altar, it does not forbid the temporary reservation of It in a second altar and he gives, as an exception, the example of the temporary reservation in a second altar for the purpose of distribut-

[2] S.R.C., decr. 23 nov. 1880, ad IV—*Decreta Authentica*, n. 3525.

[1] S.R.C., decr. 18 maii 1878—*Decreta Authentica*, n. 3449.

ing Holy Communion.[2] Though it is possible that Van Hove was thinking of a case in which the Blessed Sacrament reserved at the second altar would be consecrated during a Mass said at that altar, his statement seems too general to admit of restriction to that case. Outside that case, his statement would imply that it is not only permissible to reserve temporarily the Blessed Sacrament at a second altar for the purpose of distributing Holy Communion but also to transport the Blessed Sacrament thither from the altar in which it is continuously reserved.

EXHORTATION AFTER HOLY COMMUNION

I took the place of a pastor last Sunday and was asked by the president of the Rosary Society to give them a pious exhortation after I had distributed Holy Communion to the members. They told me that the pastor must have forgotten to tell me that it was his custom to do so. Rather than offend, I complied with their request, though I had never heard that it was lawful to interrupt the Mass for this purpose. As I may go back to the parish again as a substitute for the pastor, I should like some instruction as to whether it is lawful to act as I did.

INSCITUS

Surely the petitioner must have been aware that in many parishes it is customary, especially at the early Masses for the sake of permitting laborers to leave after the Communion of the Mass, to read the Epistle and Gospel and preach the sermon after the distribution of Holy Communion. This could have been used as a point of departure for his arguing that it was permissible also to deliver a pious exhortation to the communicants just after they had received Holy Communion. Of course, he may have thought that such a procedure was not exactly like the preaching of the sermon or the giving of the instruction, inasmuch as there exists no obligation to give the pious exhortation similar to that requiring a catechetical instruction or a homily on Sundays and holy days of obligation.[1]

[2] *De Sanctissima Eucharistia,* p. 157.

[1] Can. 1331. Praeter puerorum institutionem de qua in can. 1330, parochus non omittat pueros, qui primam communionem recenter receperint, uberius ac perfectius catechismo excolere.

Can. 1332. Diebus dominicis aliisque festis de praecepto, ea hora quae suo iudicio magis apta sit ad populi frequentiam, debet insuper parochus catechismum fidelibus adultis, sermone ad eorum captum accomodato, explicare.

However, he may put away his doubts since a sound reason justifies the interruption of the Mass before the Offertory and after the priest's communion.[2] The Sacred Congregation of Rites has recognized as a sound reason the giving of a pious exhortation after the distribution of Holy Communion,[3] or even immediately after the priest's communion and before the communion of the faithful, though in this case, the permission of the local Ordinary is required.[4]

INTERRUPTION OF MASS

On holy days of obligation no men attend the second Mass I celebrate in my church in this mining town in which I am stationed. Since I fear to place temptation in the path of the boys, I have been taking up the collection myself just after the sermon before I resume the celebration of Mass. One of my confreres, learning of this, tells me that it is forbidden by law. Must I discontinue the practice?

MISELLUS

A sound reason is sufficient to justify the interruption of Mass before the Offertory or after the priest's Communion.[1] The proclamation of the banns and the preaching of the sermon after the first Gospel are recognized as sound reasons in this respect; and so are the reception of religious vows or the delivery of a ferverino after the Communion of the priest.

Can. 1344, § 1. Diebus dominicis ceterisque per annum festis de praecepto proprium cuiusque parochi officium est, consueta homilia, praesertim intra Missam in qua maior soleat esse populi frequentia, verbum Dei populo nuntiare.

Can. 1345. Optandum ut in Missis quae, fidelibus adstantibus, diebus festis de praecepto in omnibus ecclesiis vel oratoriis publicis celebrantur, brevis Evangelii aut alicuius partis doctrinae christianae explanatio fiat; . . .

[2] Cf. Coronata, *De Sacramentis*, I, n. 223.

[3] S.R.C., decr. 16 apr. 1853, ad IV—*Decreta Authentica*, n. 3009.

[4] S.R.C., decr. 12 sept. 1857, ad X—*Decreta Authentica*, n. 3059. Cf. S.R.C., decr. 23 mart. 1881—*Decreta Authentica*, n. 3529; in this case, the Sacred Congregation forbade the practice of a priest who continually interrupted the Mass to explain to the people the mystical significance of the ceremonies and to arouse their sentiments of piety to greater intensity.

[1] Cf. Coronata, *De Sacramentis*, I (Taurini-Romae: Marietti, 1943), n. 224.

Gasparri rejected a custom in virtue of which the celebrant took off the chasuble after the first Gospel and took up a collection from the faithful assisting at the Mass.[2]

In the United States there exists an explicit and strict prohibition of particular law against such an action. The II Plenary Council of Baltimore,[3] in a decree endorsed by the III Plenary Council of Baltimore,[4] commanded that the celebrant should not leave the altar except as provided in the rubrics or for the purpose of delivering the sermon, not even to say prayers ordered by the local Ordinary; these were to be recited either before or after Mass. It called the practice of leaving the altar to take up a collection a most abominable abuse (*abusum turpissimum*), injurious to the Church and its sacred ceremonies, causing shame and indignation to Catholics and provoking in non-Catholics derision and contempt. Therefore it insisted on its extirpation.

In the light of this explicit and unreserved condemnation it seems evident that the circumstances of the given case do not warrant the celebrant in taking up the collection. The insignificant sum involved only tends to reflect the celebrant's pusillanimity all the more and thus to intensify the reasons telling for the prohibition. It can, therefore, not be alleged as a reason for the relaxation of the law.

COMPLETION OF MASS

A priest visiting his relatives in my parish was given permission to celebrate Mass on a side altar. In the midst of the Mass, just after he had consecrated the Host, he fell to the floor and we carried him to the sacristy. My assistant remained kneeling at the altar where the consecrated Host reposed. Both my assistant and I had already celebrated Mass. A physician was called from across the street and he found that it was only a fainting spell. Meantime, however, the physician had given him a mouthful of brandy. Within a quarter of an hour, the priest had recovered sufficiently to continue with the Mass. He did so, in spite of the fact that he had broken his fast. Was this action justified?

INUSITATUS

[2] Cf. *Tractatus Canonicus de Sanctissima Eucharistia* (2 vols., Parisiis: Delhomme et Briguet, 1897), n. 847. He states there also that the local Ordinary cannot impose by precept the obligation of the taking up of a collection in that fashion.

[3] *Acta*, n. 364.

[4] *Acta*, n. 293.

The divine law forbids that Mass be discontinued after the consecration of the Host and before the end of the priest's communion. The obligation thus imposed is a grave one. If, therefore, during this interval, the celebrant should become incapacitated, he must continue the Mass if, after an interval, he is able to do so, even though in the meantime he has broken his fast.[1]

If the interruption came during the consecration of the chalice, the Mass should be resumed with the words immediately following the elevation of the Sacred Host.[2]

If the celebrant is not able to resume the celebration of Mass, there remains a grave obligation of completing the Mass through another priest, even one that is not fasting or one that is excommunicated, suspended or irregular, if no other can be obtained, provided that the Mass can be continued within an hour. But it is lawful to complete the Sacrifice even if the arrival of the celebrant should be delayed beyond an hour.[3]

PERMISSION TO CELEBRATE MASS

A priest from a neighboring diocese whose home is in my parish, on the occasion of his visits to his parents, goes about the parish, and even the diocese, soliciting his friends for funds to support the street preaching in which he is engaged in his own diocese. On his latest visit, he came in late on Sunday night and called me for permission to celebrate Mass the next morning. I refused him because he had no permission from the local Ordinary of this diocese to take up these collections. He retorted that he did not intend to take up any collection on the occasion of that visit. Nevertheless I refused to permit him to say Mass the next morning. He reported me to my own bishop and to his bishop. Have I erred in my action?

PRAESAGUS

Canon 1503 forbids clerics and laymen to collect for any pious or ecclesiastical purpose or institution without the written permission of the Holy See or their own Ordinary and the Ordinary of the place in which the collection is taken up. However, this canon

[1] Cf. Alphonsus, *Theologia Moralis,* VI, n. 355; Cappello, *De Sacramentis,* I, n. 774, 4.

[2] Cf. Rubricas Missalis, *De Defectibus in Celebratione Missae,* X, n. 3.

[3] Cf. Cappello, *ibid.,* 774, 3; Prümmer, *Manuale Theologiae Moralis secundum Principia S. Thomae Aquinatis* (4. et 5. ed., 3 vols., Friburgi Brisgoviae: Herder, 1928), III, n. 304, 7; Coronata, *De Sacramentis,* I, n. 223.

safeguards the provisions of canons 621-624 which make special norms for religious. These norms do not differ substantially from the rule of canon 1503 except in relation to mendicants; these are authorized to collect in the diocese in which their monastery is located with only the permission of their superior. The law of the II Plenary Council of Baltimore [1] is in agreement with this rule. In addition, it exhorts bishops to impose the penalty of suspension on those who violate this regulation.

The III Plenary Council of Baltimore [2] addressed itself to the same problem and forbade pastors to permit priests to say Mass even once when it is known that they have come into the parish for the purpose of taking up collections. It further ordained that permission was not to be given them by the local Ordinary unless it was requested in advance by their own Ordinary or by their religious superior. This provision seems still operative inasmuch as it is in harmony with the norms of the Code. However, the prohibition against the admission of these priests to the celebration of Mass seems contrary to the Code and therefore inoperative.

Canon 804 separates the qualifications for the celebration of Mass from those requisite for the taking up of collections.[3] It is true that § 3 of that canon authorizes local Ordinaries to make special regulations in this matter, provided they are not in opposition to the canon itself.[4] But the rules contemplated seem to be those assuring the admission to the celebration of Mass of only those who are externally worthy of that function. For that reason,

[1] *Acta,* n. 119; this is a quotation of a decree of the III Provincial Council of Baltimore (1837).

[2] *Acta,* n. 295.

[3] Can. 804, § 2. Si iis litteris [commendatitiis sui Ordinarii in casu sacerdotum saecularium ritus Latini] careat [sacerdos extraneus ecclesiae in qua celebrare postulat], sed rectori ecclesiae de eius probitate apprime constet, poterit admitti; si vero rectori sit ignotus, admitti adhuc potest semel vel bis, dummodo, ecclesiastica veste indutus, nihil ex celebratione ab ecclesia in qua litat, quovis titulo, percipiat, et nomen, officium suamque dioecesim in peculiari libro signet.

[4] Can. 804, § 3. Peculiares hac de re normae, salvis huius canonis praescriptis, ab Ordinario loci datae, servandae sunt ab omnibus, etiam religiosis exemptis, nisi agatur de admittendis ad celebrandum religiosis in ecclesia suae religionis.

the exclusion from the celebration of Mass of one who is known to have come into the parish for the purpose of collecting seems at variance with the favor shown in canon 804, § 2, at least until an overt act of collecting has occurred.

In the given case, it seems clear that the visiting priest has on the occasion of previous visits violated the prohibitions of canon 1503 and of the Councils of Baltimore. On the occasion of his last visit, however, it seems that he had not had the opportunity of taking up a collection before he was refused permission to say Mass. One is inclined to say that, under those circumstances, this permission should not have been refused.

STIPENDS FOR A NOVENA OF MASSES

A woman gave me a very generous stipend for a novena of high Masses to be celebrated in my church in preparation for the Feast of Mother Frances Cabrini. On one of the days I was compelled by illness to call in a neighboring priest to sing one of the Masses, to prevent the interruption of the novena. I gave him only the usual diocesan stipend for a high Mass. I have become disturbed in the meantime by the thought that perhaps I should have given him one-ninth of the total stipend. Should I have done so?

VIRITIM

Canon 840, § 1, requires that the entire manual stipend be transmitted to a priest who is to celebrate the Mass in one's stead, unless the donor has expressly permitted the retention of some portion of it or it is definitely certain that the amount in excess of the diocesan stipend was given because of an intention to favor the priest recipient.[1]

This was insisted upon in a case decided in 1921 by the Sacred Congregation of the Council in reference to novena and Gregorian Masses.[2] In the diocese involved the tax for novena Masses and for Gregorian Masses was higher than that for other Masses, even for those celebrated at a fixed hour. It was thought that a portion

[1] Can. 840, § 1. Qui Missarum stipes manuales ad alios transmittit, debet acceptas integre transmittere, nisi aut oblator expresse permittat aliquid retinere, aut certo constet excessum supra taxam dioecesanam datum fuisse intuitu personae.

[2] S.C.C., resol. *Montisvidei*, 16 apr. 1921—*AAS*, XIII (1921), 532; Bouscaren, *The Canon Law Digest*, I, 403, 404.

might be retained for the pastor and the church, if the celebrant received the amount specified for the celebration of Mass at a fixed hour. It was alleged, in justification, for instance, that the pastor has the burden of preventing the interruption of the series by obtaining the services of another priest. But the Sacred Congregation answered that this argument might be alleged with regard to any rector or pastor who accepts a stipend for a Mass that he cannot celebrate himself. It answered a further argument, which held that the pastor remains responsible for the celebration of the Masses, by affirming that the contrary is true, since the responsibility of celebrating even Gregorian Masses lies wholly on the celebrant, who, according to canon 833 is obliged not only to celebrate the Mass, but to fulfill the conditions attached.[3]

In the light of this norm, even though there be no fixed stipend established by diocesan ordinance for a novena of high Masses, it seems beyond dispute that the celebrant of all the Masses should receive the whole stipend. The donor's intent was to honor Mother Frances Cabrini, not to show favor to the priest to whom the offering was made. For the same reason, a priest who celebrates any number of the novena Masses less than the nine should share proportionately in the total stipend.

LITURGICAL MOURNING ON PALM SUNDAY

On Palm Sunday, a priest who took my place over the Sunday tolled the bell before each of the two Masses he celebrated for the parish. The purpose was to mourn the death of a sailor, the news of whose death on the high seas had just been received from the Navy. On the Saturday evening preceding, the janitor put some black drapery over the front door of the church. I was indignant on learning of this conduct and refused to pay the usual honorarium. Was I justified in my refusal?

EXACTOR

Even in the presence of the corpse, a funeral Mass is forbidden on Palm Sunday.[1] Now on all days on which a funeral Mass in

[3] Can. 833. Praesumitur oblatorem petiisse solam Missae applicationem; si tamen oblator expresse aliquas circumstantias in Missae celebratione servandas determinaverit, sacerdos, eleemosynam acceptans, eius voluntati stare debet.

[1] Cf. Wapelhorst, *Compendium Sacrae Liturgiae* (11. ed., New York: Benziger Bros., 1931), p. 88.

the presence of the remains is forbidden, there must be no tolling of the bells for the deceased from the first Vespers of the preceding day until the end of the day itself.[2]

Even had this been an ordinary Sunday on which the absolution in the absence of the corpse could have been given, in the given case, after the Mass of the day, the tolling of the bells and the using of black drapery could not be allowed.[3]

However, there is no evidence offered by the questioner that the proper ecclesiastical authorities have intervened to impose a fine on the priest who permitted the tolling of the bells. On the other hand, he did not breach his contract by his conduct. Therefore, the honorarium must be paid in spite of the pastor's indignation.

CONFIRMATION AND MATRIMONIAL SANATION

In an application for the sanation of a mixed marriage attempted before a civil magistrate, it is stated that the Catholic party has not yet been confirmed. Can the faculty of the local Ordinary be used to grant the sanation before the reception by the Catholic party of the Sacrament of Confirmation?

MANICULA

Canon 1021, § 2, requires that Catholics receive the Sacrament of Confirmation before their admission to the Sacrament of Matrimony, unless this would involve a serious inconvenience.[1] In spite of the fact that this canon excuses the party only when he is prevented from receiving confirmation by a *serious* inconvenience, authors hold that the violation of the obligation would not exceed a venial sin. They also hold that the serious inconvenience can arise not only in regard to the party but also in regard to the bishop who would be invited to confirm him.[2] It is said to suffice to

[2] Cf. S.R.C., decr. 21 oct. 1927—*AAS*, XIX (1927), 381; Bouscaren, *The Canon Law Digest*, I, 561.

[3] Cf. S.R.C., *loc. cit.*

[1] Can. 1021, § 2. Catholici qui sacramentum confirmationis nondum receperunt, illud, antequam ad matrimonium admittantur, recipiant, si id possint sine gravi incommodo.

[2] Cf. Coronata, *De Sacramentis*, III (Taurini-Romae: Marietti, 1946), n. 87; Cappello, *Tractatus Canonico-Moralis de Sacramentis*, 3 vols. in 6, Vol. III, *De Matrimonio* (ed. 4, Romae, Taurinorum Augustae: Officina Libraria Marietti, 1939), n. 150.

excuse the party that a notable expenditure of money would be involved or a long journey, or even the postponement of the marriage for a few days. Indeed, De Smet says that the pastor fulfills his obligation when he tells the party of the latter's obligation to receive the Sacrament of Confirmation.[3]

The bishop can, therefore, apart from the inconvenience of the Catholic in this case, determine whether is would be a serious inconvenience for him to confer confirmation before using his faculty to sanate the marriage. If he would find it no serious inconvenience for him to confer confirmation at the cathedral, he may still from the very circumstances of the case come to the conclusion that it would seriously inconvenience the Catholic party to come to the cathedral, at least at an hour that would not seriously inconvenience the bishop.

The Catholic party should be warned, however, of his obligation of receiving confirmation which persists after the sanation in virtue of canon 787.[4] Refusal to receive this Sacrament when no inconvenience is involved can hardly be anything but contempt of the Sacrament, and this the common view regards as gravely sinful.[5] The avoidance of grave scandal or of a threat to one's salvation can also cause the precept to be a grave one.[6]

PROOF OF BAPTISM AND MARRIAGE

Philip and Felicita, both baptized Catholics residing within the limits of my parish, desire to be married at once because the man has enlisted in the Army. I have called the banns but the man, baptized in Europe, has not yet received his baptismal certificate for which he wrote two months ago, addressing the letter to his mother who still resides in the parish where he was baptized.

[3] *Tractatus Theologico-Canonicus de Sponsalibus et Matrimonio* (4. ed. [2. ed. post Codicem], Brugis: Car. Beyaert, 1927), n. 687 bis, in nota.

[4] Can. 787. Quanquam hoc sacramentum non est de necessitate medii ad salutem, nemini tamen licet, oblata occasione, illud negligere; imo parochi curent ut fideles ad illud opportune tempore accedant.

[5] Cf. Cappello, *Tractatus Canonico-Moralis de Sacramentis,* Vol. I (4. ed., Romae, Taurinorum Augustae: Marietti, 1945), n. 207; Coronata, *De Sacramentis,* I, n. 173.

[6] Prümmer, *Manuale Theologiae Moralis secundum Principia S. Thomae Aquinatis* (4. et 5. ed., 3 vols., Friburgi Brisgoviae: Herder, 1928), III, n. 161.

His father and one of his sponsors have taken oath that they were present at his baptism.

It would appear that the marriage must be indefinitely postponed if he must await the coming of his baptismal certificate.

It is to be observed further that the young man came to this country with his father at the age of eight years and that he is now only twenty-two years old, these facts making unlikely a previous marriage in Europe or in this country.

MODULATOR

The problem in this case is not the proof of baptism but the proof of the freedom of the man to contract marriage. Canon 779 indicates that to prove the baptism the sworn testimony of one reliable witness suffices.[1] In regard to contemplated marriage, however, the required baptismal certificate is demanded not only as proof of the baptism but also, and perhaps even specifically, as partial proof of the freedom of the baptized party to contract marriage.[2] For this reason, the Sacred Congregation of the Sacraments, motivated by a desire to make it serve this purpose as nearly infallibly as possible, required that the certificate should be one issued within six months of its presentation and that it should contain a transcript of the marginal annotations contained in the baptismal register. This provision was contained in the Instruction issued by this Sacred Congregation on June 29, 1941.[3] As to what these marginal annotations must contain, canon 470, § 2, gives the list of items to be inserted there,[4] while it likewise requires that in transcripts these items must also be included. Moreover, the Instruction of the same Sacred Congregation on procedure in diocesan tribunals, issued in 1936, provided that the fact of a decla-

[1] Can. 779. Ad collatum baptismum comprobandum, si nemini fiat praeiudicium, satis est unus testis omni exceptione maior, vel ipsius baptizati iusiurandum, si ipse in adulta aetate baptismum receperit.

[2] S.C. de Sacramentis, 6 mart. 1911—*AAS*, III (1911), 102.

[3] Cf. Bouscaren, *The Canon Law Digest*, II, 256.

[4] Can. 470, § 2. In libro baptizatorum adnotetur quoque si baptizatus confirmationem receperit, matrimonium contraxerit, salvo praescripto can. 1107, aut sacrum subdiaconatus ordinem susceperit, vel professionem sollemnem emiserit, eaeque adnotationes in documenta accepti baptismatis semper referantur.

ration of nullity should also be inserted in the margin of the baptismal register.[5]

The freedom to marry of immigrant laborers was the special concern of the Instruction of the same Sacred Congregation issued July 4, 1921.[6] But this referred to those who had emigrated after reaching the age of puberty. The precautions needed in the case of these persons was again emphasized in the Instruction of 1941, which specifically referred to the Instruction of 1921.[7]

Since the man in this case arrived in the United States before reaching the age of puberty, the special concern of the Instruction of 1921 for the case of immigrants seems not to contemplate his case. Moreover, the proclamation of the banns in Italy is not needed.[8]

On the other hand, the baptismal register in Italy would contain marginal notations reflecting the activity of the man in the United States after he had attained the age of puberty. It is clear that it must be obtained if it is possible to obtain it.

The question in the case at hand, then, resolves itself into this: is it possible to obtain the man's baptismal certificate? It seems safe to say that moral impossibility exists in view of the date set for the marriage. One feels somewhat safe in arriving at this conclusion from a consideration of an analogous situation solved by the Code Commission. The Commission replied that it is left to the prudent judgment of the local Ordinary to provide for the proof of the free state of the party in accordance with canon 1023, § 2, if the place in which the latter resided for more than six months after reaching the age of puberty should be far distant, so that the result of the publications would not be available in time for the celebration of the marriage at the time scheduled.[9]

[5] Art. 225, §§ 1, 2—*AAS*, XXVIII (1936), 357, 358.

[6] *AAS*, XIII (1921), 348; cf. Bouscaren, *The Canon Law Digest*, I, 497, 498.

[7] Cf. Bouscaren, *The Canon Law Digest*, II, 260.

[8] Can. 1023, § 2. Si pars alio in loco per sex menses commorata sit post adeptam pubertatem, parochus rem exponat Ordinario, qui pro sua prudentia vel publicationes inibi faciendas exigat, vel alias probationes seu coniecturas super status libertate colligendas praescribat.

[9] Cf. Code Commission, 3 iun. 1918, IV, 4—*AAS*, X (1918), 345; Bouscaren, *The Canon Law Digest*, I, 499.

As the solution implies, the matter should be laid before the local Ordinary for his judgment in regard to the sufficiency of the proof of the freedom of the party to contract marriage, and this even if both parties belong to the same diocese.

In the matter of obtaining the certificate one notes that the Instruction of 1941 provided that this certificate, as well as other records and documents affecting him, should be transmitted through the curia of the groom's diocese.[10] Of course, the groom's diocese is in the United States. But analogously one can but conclude that the baptismal certificate needed in this case should have been sought by the pastor from the curia of the diocese in which the baptism took place. It might even be suggested that better results would have been obtained had the pastor approached his own curia and enlisted its good offices in seeking the certificate from the curia abroad.

THE PASTOR WHO PROCLAIMS THE BANNS

I am about to assist at the marriage of a young woman, nineteen years of age, who has been residing six weeks in my parish. The banns have already been proclaimed once in the parish in which her father has his domicile as well as in the parish of the domicile of the groom. One of my confreres now tells me that I should have proclaimed the banns also in my parish. Do I need a dispensation from the single proclamation that I so far have failed to make?

CANORUS

The Code definitely accords to the pastor of the parish in which the bride resided a month the right to assist at her marriage.[1] But a month's residence does not of itself give a party a parochial domicile or quasi-domicile. On the other hand, it is in the parish of one's domicile or quasi-domicile that the banns are required to be

[10] Cf. Bouscaren, *The Canon Law Digest*, II, 255.

[1] Can. 1097, § 1, 2°. Parochus autem vel loci Ordinarius matrimonio licite assistunt: . . . Constito . . . de domicilio vel quasi-domicilio vel menstrua commoratione aut, si de vago agatur, actuali commoratione alterutrius contrahentis in loco matrimonii.

§ 2. In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi iusta causa excuset; . . .

proclaimed.[2] If the party has no domicile or quasi-domicile, or no domicile or quasi-domicile in any parish, then the banns are required to be proclaimed in the parish of actual residence.

In the given case, the prospective bride retains the domicile of her father, since she is a minor.[3] Therefore it cannot be said that she does not have a domicile or a quasi-domicile, even if she had intended on leaving home never to return. It is possible, however, that she intended to reside for the greater part of the year in the parish in which she is to be married. In that case, she would have obtained a quasi-domicile in that parish, even though she is a minor, and the pastor of that parish would have become her proper pastor. In that event the banns would need to be proclaimed also in his parish.[4] Under that hypothesis, too, since he has failed to make one proclamation, he must supply for the deficiency, preferably by persuading the parties to defer the marriage long enough to permit the additional proclamation. A sound reason suffices to ask for a dispensation from a single proclamation; it need not be a grave one. If the parties would find it difficult to postpone the marriage, that reason seems adequate. Of course, the decision as to its sufficiency would rest with the local Ordinary.

Since the bride is a minor, the pastor should ascertain that the parents know of the proposed marriage and do not object to it. If he is uncertain of this, he should interrogate the parents in accordance with the questionnaire provided by the Instruction of the Sacred Congregation of the Sacraments of June 29, 1941.[5] If this interrogation reveals that they are opposed to the marriage,

[2] Can. 1023, § 1. Matrimoniorum publicationes fieri debent a parocho proprio.

Can. 94, § 1. Sive per domicilium sive per quasi-domicilium suum quisque parochum et Ordinarium sortitur.

§ 2. Proprius vagi parochus vel Ordinarius est parochus vel Ordinarius loci in quo vagus actu commoratur.

§ 3. Illorum quoque qui non habent nisi dioecesanum domicilium vel quasi-domicilium parochus proprius est parochus in quo actu commorantur.

[3] Can. 93, § 1. . . . minor [necessario retinet] domicilium illius cuius potestati subiicitur.

§ 2. Minor infantia egressus potest quasi-domicilium proprium obtinere; . . .

[4] Cf. Coronata, *De Sacramentis,* III, n. 89; De Smet, *De Matrimonio,* n. 47.

[5] Cf. Bouscaren, *The Canon Law Digest,* II, 272.

the pastor must consult the local Ordinary before assisting at it.[6]

Since the bride has not resided for six months in the parish in which the marriage is to take place, no obligation arises on that score to make the proclamations.[7]

DISPENSATION FROM THE BANNS

A dispensation from two proclamations of the banns is needed for the marriage of James and Philomena.

The wedding is to take place in my parish where the aunt of Philomena resides, though Philomena resides with her parents in New York; Philomena's pastor neglected to inform the pastor of James to call the banns the first two times. James does not reside in this diocese either, but in Rochester, New York. I have the necessary permission from the pastor of Philomena.

PLACITUS

It appears from the case as stated that Philomena's pastor has not complied with the requisites of n. 4, a) of the Instruction of the Sacred Congregation of the Sacraments issued in 1941. As the pastor who had the right to assist at the marriage he should have sent to the pastor assisting at the marriage outside his parish a summary of his investigation as provided for in the Instruction. The Instruction also attached a sample of the form in which that summary should be made (Exhibit V of the Appendix).

In any event, the local Ordinary of the diocese in which this marriage is to occur cannot grant a dispensation from the banns, since he is not the Ordinary of either party. Though the groom's Ordinary would be competent, in this case, to grant the dispensation, since the place of the marriage is outside the dioceses of both the bride and the groom,[1] nevertheless it seems preferable to request

[6] Can. 1034. Parochus graviter filiosfamilias minores hortetur ne nuptias ineant, insciis aut rationabiliter invitis parentibus; quod si abnuerint, eorum matrimonio ne assistat, nisi consulto prius loci Ordinarius.

[7] Can. 1023, § 2. Si pars alio in loco per sex menses commorata sit post adeptam pubertatem, parochus rem exponat Ordinario, qui pro sua prudentia vel publicationes inibi faciendas exigat, vel alias probationes seu coniecturas super status libertate colligendas praescribat.

[1] Can. 1028, § 1. Loci Ordinarius proprius pro suo prudenti iudicio potest ex legitima causa a publicationibus etiam in aliena dioecesi faciendis dispensare.

§ 2. Si plures sint Ordinarii proprii, ille ius habet dispensandi, in cuius dioecesi matrimonium celebratur; quod si matrimonium extra proprias ineatur dioeceses, quilibet Ordinarius proprius dispensare potest.

the pastor of Philomena to make the petition for the dispensation, especially since it seems that he must be also called upon to fill out and transmit the summary of his prenuptial investigation and perhaps to obtain from his diocesan curia the *nihil obstat,* a document which he may also have failed to obtain.

DENIAL OF DISPENSATION FROM THE BANNS

I desire to validate a marriage attempted by two Catholics before a civil magistrate. The parties object seriously to the proclamation of the banns. However, a confrere told me that it is useless to ask for a dispensation since he was refused a dispensation when he sought it in a case exactly like mine. Can I proceed without a dispensation?

ASYLUM

The question seems to be proposed by one who has crossed a bridge before he came to it. He can scarcely allege the action of his superior in another case as the latter's action in his own case.

The case affords at least two possible reasons for seeking a dispensation from the proclamation of the banns: the preservation of the good name of the parties and the danger of incontinence. If the local Ordinary is satisfied that either reason is verified, he should grant the dispensation.[1] If the people of the parish in which the banns should be proclaimed think that the parties are really man and wife according to the law of the Church, both reasons seem applicable. If it is publicly known in that parish that they have merely attempted a marriage before a civil magistrate, there is no reason to preserve a reputation which they have already forfeited. But this is true only if it is generally known in the parish that they have been living in concubinage. But even in the latter case their habitual mode of living makes it unwise to risk incontinence during the period necessary to proclaim the banns, even if the parties agree to live in separate houses during the interval.

Should the vicar general refuse the dispensation, it is still possible to approach the bishop; but the latter must be told of the refusal on the part of the vicar general, for otherwise his favorable action

[1] Cf. Coronata, *De Sacramentis,* III, n. 348; Gasparri, *Tractatus Canonicus de Matrimonio* (ed. nova ad mentem Codicis I.C., 2 vols., Romae: Typis Polyglottis Vaticanis, 1932), n. 179.

would be invalid.[2] But even should the bishop refuse the dispensation, the proper interpretation of his action would conclude that he was not satisfied of the existence of the reasons alleged. Even if incontrovertible proof were available to demonstrate the existence of the reasons, nevertheless the rejection of them would not authorize a pastor to proceed to assist at a marriage without the proclamation of the banns or a dispensation from them.[3]

THE BANNS OF A NEWLY CONVERTED CATHOLIC

A non-Catholic woman took instructions from me as a preliminary requisite to the seeking of a dispensation from the impediment of disparity of cult in behalf of the Catholic man with whom she proposed to contract marriage. Just before the last scheduled instruction, she told me she wished to be a Catholic. The problem that confronts me derives from the fact that the date of the marriage has already been scheduled and it would prove highly embarrassing were the parties compelled to postpone it for the proclamation of the banns. Is it possible to obtain a dispensation from them?

PISCICULUS

Without a sound justifying reason, a dispensation from the proclamation of the banns would be invalid.[1] A sound reason suffices for a dispensation from one proclamation of the banns, since it would not exceed a venial sin to omit one proclamation without a dispensation.[2] However, since it is a grave sin to omit all the proclamations, a serious reason is needed to justify a dispensation in this case.

Now in regard to the publications recommended in places in which the party has resided for six months after attaining the age of puberty, the Code Commission referred to canon 1023, § 2, and left the matter to the decision of the local Ordinary in a case in which a scheduled marriage would need to be postponed for a rather long time if it were necessary to await receipt of information regarding

[2] Cf. can. 44, § 2.

[3] Cf. Cappello, *De Matrimonio,* n. 161.

[1] Vermeersch-Creusen, *Epitome Iuris Canonici,* II (5. ed., Mechlini: H. Dessain, 1934), n. 291.

[2] Cf. Coronata, *De Sacramentis* (3 vols., Taurini-Romae: Marietti, 1943-1946), III, n. 88.

the result of publications in a far distant place.[3] The case before the Code Commission differed from the present one in two respects: the length of time needed and the nature of the obligation. In regard to the length of time, in the case discussed here, only the length of time required for the publications is involved; in the case before the Code Commission the additional time for the mails was involved. As to the nature of the obligation, in the case here discussed, the primary obligation of the proclamation of the banns is involved; in the case before the Code Commission, it was the recommendation of canon 1023, § 2, that was involved. Under that rule, the local Ordinary is given by the Code itself the authority to substitute other proofs for the proclamation of the banns in places in which the parties resided for six months after attaining the age of puberty.

The nature of the embarrassment is not too clear. A change in date seems not so drastic as a change in the ceremonies such as is involved in the celebration of a Catholic marriage as distinct from a mixed marriage. If invitations have been sent out, they will probably need correction, since the marriage will now take place in church and not in the rectory, as the invitations probably declared.[4]

On the other hand, it is true that if the woman had not decided to embrace the Faith, the banns would not have been proclaimed.[5] But this fact is now irrelevant, since the obligation of canon 1023 becomes effective with the conversion of the woman to the Catholic Faith, and it is obligatory even though in the individual case there would seem no need for the proclamation of the banns.[6]

But the well founded hope of the conversion of the non-Catholic party offers a sufficient reason for a dispensation from the impediment of mixed religion or disparity of cult. It seems safe to conclude, therefore, that the prevention of the loss of Faith would

[3] Code Commission, 3 iun. 1918—*AAS,* X (1918), 345; Bouscaren, *The Canon Law Digest,* I, 499.

[4] It is true, of course, that a dispensation can be issued by the local Ordinary to permit, for the purpose of avoiding greater evil, that a mixed marriage should take place in church; cf. can. 1109, § 3.

[5] Only in an exceptional case would the local Ordinary permit the proclamation of the banns for a mixed marriage; cf. can. 1026.

[6] Can. 21. Leges latae ad praecavendum periculum generale, urgent, etiamsi in casu peculiari periculum non adsit.

suffice for a dispensation from the proclamation of the banns. If, therefore, the convert shows serious displeasure at the prospect of the proclamation of the banns or at the postponement of the wedding until after the proclamation of the banns, one should say that a sufficiently serious reason presents itself for a dispensation from the proclamations.

BANNS IN DANGER OF DEATH

After obtaining the signature of the parties to the required promises, acting as pastor of the Catholic party, I dispensed a dying Catholic woman from the impediment of mixed religion for the purpose of validating her attempted marriage and of legitimating two children born of the marriage. On returning home, I looked up canons 1043 and 1044 and noted that there is no provision made for a dispensation from the banns. I knew, of course, that in the case of a mixed marriage I did not need to dispense from the banns. But I am wondering what action I should take should a similar case arise in the future involving two Catholics who, for example, had similarly attempted marriage.

ALATUS

Since canon 1043 contains an authorization given to local Ordinaries it would have been superfluous to grant them a power to dispense from the banns, since this power is granted them in canon 1028. Canon 1044 incorporates by reference only the specification of power contained in canon 1044 and gives to pastors and certain other priests the power conferred in canon 1043 on local Ordinaries, restricted to cases in which it is impossible to reach the local Ordinary. Since canon 1043 does not grant the authority to dispense from the banns, it must be concluded that canon 1044 does not grant it either. Therefore, the pastor cannot grant a dispensation from the banns.

On the other hand, in the chapter dealing with the prenuptial investigation, canon 1019, § 2, states that in danger of death, if it is impossible to obtain other means of proof, it suffices, if there exists no evidence to the contrary, to obtain the sworn statements of the contracting parties that they have been baptized and that they are not bound by an impediment.[1]

[1] The formula for the supplementary oath is found in Exhibit IV of the Instruction of the Sacred Congregation of the Sacraments of June 29, 1941—cf. Bouscaren, *The Canon Law Digest,* II, 272.

Authors accept this provision as excusing the pastor from the obligation of proclaiming the banns in danger of death if it is impossible to reach the local Ordinary to obtain the requisite dispensation.[2]

CONSTRAINED BETROTHAL

Margaret and Matthew, both Catholics of my parish, signed a contract of betrothal under the influence of grave fear exercised by their respective fathers when they were only sixteen years of age. Their fathers were law partners who controlled about eighty per cent of the real estate in town, and they desired to unite the families by the tie of marriage. The parents witnessed the signatures.

They are both twenty-two years old. Six months ago Matthew laughed about the trick their fathers had played on them and said it was no trick at all, for he would do the same thing over. Margaret has witnesses to the fact that he said this.

But now Matthew has gone off, after finishing college, and entered the novitiate of a religious Order. Margaret has been restrained from entering suit for breach of promise only because of her desire not to create scandal.

ALAPA

The constraint practised on these young persons did not make their engagement invalid, as it might have made their marriage invalid.[1] Their contract, however, is rescissible in accordance with canon 103 and canons 1684-1689. Canon 1529, canonizing for ecclesiastical transactions the regional secular law governing contracts, should be restricted to contracts the subject matter of which is property. But even if its provisions were applicable to the contract of betrothal, the secular law governing contracts in this country would not exceed the terms of canon 103. This is true whether the contract be regarded from the point of view of the

[2] Cf. Coronata, *De Sacramentis,* III, n. 94; Cappello, *De Matrimonio,* n. 162; Gasparri, *De Matrimonio* (1932 ed.), n. 153. They also permit the omission of the banns in other cases of grave emergency when the local Ordinary cannot be reached. Cf. Roberts, *The Banns of Marriage* (Washington, D. C.: The Catholic University of America, 1931), p. 96.

[1] Can. 103, § 2. Actus positi ex metu gravi et iniuste incusso vel ex dolo, valent, nisi aliud iure caveatur; sed possunt ad normam can. 1684-1689 per iudicis sententiam rescindi, sive ad petitionem partis laesae sive ex officio.

Can. 1087, § 1. Invalidum quoque est matrimonium initum ob vim vel metum gravem ab extrinseco et iniuste incussum, a quo ut quis se liberet, eligere cogatur matrimonium.

duress practised or of the age of the parties. The contract is rescissible.

Does the statement of Matthew after the duress had come to an end and after he had attained his majority constitute an act of ratification? It would be difficult to conclude that it does. It was an oral statement, apparently lightly made, and without a realization of its implications. It is entirely probable that Matthew did not know that the previous contract was valid, but rescissible. It seems justified to conclude that the ratification of a contract presupposes that one knows that his act is either an act of ratification or a surrender of his right to rescind. In the absence of such knowledge, his act should be interpreted as the act either of one who, believing he was not bound by his contract, felt that he could talk freely without incurring any obligation or of one who felt he could not escape the obligation of the contract and so might just as well make the best of his bargain.

Besides, it seems only right to conclude that the ratification should be ineffective unless made with the same formalities as those required for the original contract.[2]

Matthew, however, should have prosecuted his suit for rescission prior to his entrance into a novitiate; and his entrance into the latter without a decision in his favor seems to have been unlawful in virtue of the prohibition of canon 542, 2°. Under the secular law, in determining the compensation owing to a party in an action for breach of promise, the following elements are considered: loss of reputation, loss of other prospects of marriage, deterioration of social position, mortification, and anguish, as well as actual property loss. If Matthew fails to have his obligation rescinded, who can say that Margaret would not have a right to seek similar compensation in an ecclesiastical court or even a secular court?[3]

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[2] Can. 1017, § 1. Matrimonii promissio sive unilateralis, sive bilateralis seu sponsalitia, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatam a partibus et vel a parocho aut loci Ordinario, vel a duobus saltem testibus.

[3] Can. 1017, § 3. At ex matrimonii promissione, licet valida sit nec ulla iusta causa ab eadem implenda excuset, non datur actio ad petendam matrimonii celebrationem; datur tamen ad reparationem damnorum, si qua debeatur.

Decrees and Decisions

CANONICAL

SACRA CONGREGATIO RITUUM
DECRETUM

Dioecesium

STATUUM FOEDERATORUM AMERICAE SEPTENTRIONALIS

Exc.mus ac Rev.mus Dominus Joannes Thomas McNicolas, Archiepiscopus Cincinnatensis et Praeses "National Catholic Welfare Conference," omnium Archiepiscoporum Episcoporumque Statuum Foederatorum Americae Septentrionalis nomine, Sanctissimum Dominum nostrum Pium Papam XIII. enixe est adprecatus ut festum Sanctae Franciscae Xaveriae Cabrini, Virginis, in eorum dioecesibus quotannis recoli valeat sub ritu duplici secundae classis, peculiari fidelium devotione erga hanc Sanctam Virginem inspecta. Sanctitas porro Sua has preces, ab infrascripto Sacrorum Rituum Congregationis Cardinali Praefecto relatas, libenter excipiens, ut festum Sanctae Franciscae Xaveriae Cabrini, Virginis, in universa Statuum Foederatorum Americae Septentrionalis Ditione sub ritu duplici secundae classis, cum Officio et Missa propriis et approbatis recoli valeat, benigne indulgere dignata est; servatis de cetero Rubricis. Contrariis non obstantibus quibuscumque. Die 11 Junii 1948.

✠ C. Card Micara, *Praef.*

✠ A. Carinci, Archiep. Seleucien, *Secretarius*

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PONTIFICIA COMMISSIO
AD CODICIS CANONES AUTHENTICE INTERPRETANDOS
RESPONSA AD PROPOSITA DUBIA

Emi Patres Pontificiae Commissionis ad Codicis canones authentice interpretandos, propositis in plenario coetu quae sequuntur dubiis, responderi mandarunt ut infra ad singula:

I

De iure Superioris religiosi inspiciendi subditorum litteras [1]

D. An religiosi exempti, in casibus in quibus Ordinario loci subiiciuntur, libere possint, ad normam can. 611, litteras nulli obnoxias inspectioni ad eundem Ordinarium mittere et ab eodem recipere.

R. Affirmative.

Datum Romae, e Civitate Vaticana, die 27 m. Novembri a 1947.

II

De privilegio fori [2]

D. I. Utrum, ad incurrendam excommunicationem vel suspensionem de quibus in can. 2341, sufficiat ut quis, ausu temerario, personam ex recensitis in eodem canone conveniat coram laico iudice; an requiratur ut persona conventa re a iudice citetur.

R. Affirmative ad primam partem, negative ad secundam.

D. II. An interpretatio data in responso ad dubium primum valeat retrorsum.

R. Negative; et vim exserit a die publicationis in *Actorum Apostolicae Sedis Commentario Officiali.*

Datum Romae, e Civitate Vaticana, die 26 m. Aprili a. 1948.

III

De matrimonio per procuratorem [3]

D. Utrum procuratorem, de quo in can. 1089 § 1, mandans ipse designare debeat; an eiusdem designationem alii committere valeat.

R. Affirmative ad primam partem, negative ad secundam.

Datum Romae, e Civitate Vaticana, die 31 m. Maio a 1948.

M. Card. Massimi, *Praeses*

L. ✠ S.

A. Coussa, Ordinis Basilianorum Aleppen., *a Secretis*

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[1] *Acta Apostolicae Sedis,* XL (1948), 301.

[2] *Loc. cit.*

[3] *AAS,* XL (1948), 302.

SUPREMA SACRA CONGREGATIO SANCTI OFFICII
MONITUM [1]

Cum compertum sit variis in locis, contra Sacrorum Canonum praescripta et sine praevia S. Sedis venia, mixtos conventus acatholicorum cum catholicis habitos fuisse, in quibus de rebus fidei tractatum est, omnibus in memoriam revocatur ad normam canonis 1325 § 3 prohibitum esse quominus his conventibus intersint, sine praedicta venia, cum laici, tum clerici sive saeculares sive religiosi. Multo autem minus catholicis licitum est huiusmodi conventus convocare et instituere. Quapropter Ordinarii urgeant, ut haec praescripta ab omnibus adamussim serventur.

Quae quidem potiore iure observanda sunt, cum agitur de conventibus, quos "oecumenicos" vocant, quibus catholici, sive laici sive clerici, sine S. Sedis praevio consensu, nullo modo interesse possunt.

Cum vero, tum in praedictis conventibus tum extra ipsos, etiam actus mixti cultus haud raro positi fuerint, denuo omnes monentur quamlibet in sacris communicationem ad normam canonum 1258 et 731, § 2, omnino prohibitam esse.

Datum Romae, ex Aedibus S. Officii, die 5 Iunii 1948.

PETRUS VIGORITA, *Notarius*

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SACRA CONGREGATIO
DE SEMINARIIS ET STUDIORUM UNIVERSITATIBUS
DECLARATIO [2]

Cum, vi Constitutionis Apostolicae *Deus scientiarum Dominus*, d.d. 24 m. Maii a. D. 1931, ad academicum Licentiae gradum omnia exigantur quae ante eandem Constitutionem ad Lauream assequendam requirebantur, Sacra Congregatio de Seminariis et Studiorum Universitatibus, de speciali mandato Summi Pontificis, declarat atque decernit *Licentiam*, dictae Constitutionis servatis normis obtentam, eosdem sortiri iuridicos effectus ac *Lauream* ante eandem Constitutionem adeptam, nisi aliter Sedes Apostolica in casibus

[1] *AAS*, XL (1948), 257.

[2] *AAS*, XL (1948), 260.

particularibus decreverit, firmis potissimum praescriptis can. 1598, § 2 C.I.C. et art. 21, 2°, memoratae Constitutionis.

Ex Audientia Ssmi d. 23 m. Maii a. D. 1948.

I. Card. Pizzardo, *Praefectus*

L. ✠ S.

✠ I. Rossino, Archiep. tit. Thessalonicen., *Secretarius*

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Edict of Convocation of the First Synod of Pueblo

To the Clergy of the Diocese of Pueblo.

Beloved Brethren:

In accordance with the norms of Canon 356 of the Code of Canon Law, directing that a Diocesan Synod be held in each Diocese at least once in every ten years for the purpose of enacting such legislation as may be necessary or salutary for the welfare of the Diocese, it has seemed good to Us to convoke Our First Diocesan Synod now that Our Diocese is in the seventh year of its establishment. Wherefore, notification is hereby given that such a Synod shall be celebrated in Our Cathedral of the Sacred Heart at Pueblo, Colorado, on the 25th day of August, in the year 1948, at 10:30 o'clock in the morning.

In obedience to the Sacred Canons of the Code of Canon Law, the following clergy are required to attend the Synod:

The Vicar General

The Diocesan Consultors

The Vicars Forane

The Pastors in the Episcopal City

One Pastor from each Deanery, to be elected by the priests who have the care of souls in such Deaneries

Abbots who are actual superiors of Abbeys

One of the Superiors of each clerical institution of religious in the Diocese, to be designated by the Provincial Superior

Each Dean shall arrange for a meeting of all the priests in his jurisdiction. This meeting shall be held at an early date, but not later than August 1st. At this meeting the following matters shall be considered: (a) The election of the pastor-delegate to the Synod;

(b) A discussion of the proposed legislation with a view to suggesting changes, additions, eliminations, modifications, etc.; (c) The nomination of Synodal Examiners, Synodal Judges and Parish Priest Consultors. After the meeting the secretary shall make a faithful and complete report to the Promoter of the Synod.

In addition to those who are obliged by Canon Law to attend the Synod, as specified above, We decree that all other priests in the Diocese, both diocesan and religious, having the care of souls, be present also. Such priests as do not have the actual care of souls are invited and urged to attend.

Permission to be absent from the Synod must be obtained, and it will be granted by Us only after the presentation, and acceptance by Us, of a canonical reason justifying the exemption.

In order to expedite the preparatory work for the Synod, We have appointed the following General and Particular Committees:

GENERAL COMMITTEE

Rt. Rev. Msgr. Aloysius J. Miller, V.G., Rt. Rev. Francis P. Cawley, V.F., Very Rev. Joseph D. Segourn, V.F., Very Rev. Howard L. Delaney, V.F., Very Rev. Leo J. Thome, V.F., Very Rev. Francis G. Faistl, V.F., Very Rev. John B. Liciotti, Very Rev. Joseph F. Warnat, Rev. John J. Kelley, Rev. Patrick C. Stauter.

PARTICULAR COMMITTEES

I. *De Curia et de Personis:* Rt. Rev. Aloysius J. Miller, V.G., Rev. John J. Kelley, Rev. Arthur R. Kerr, Rev. Bernard Gillick, Rev. Francis J. Bottler.

II. *De Magisterio:* Rt. Rev. Aloysius J. Miller, V.G., Rev. Joseph A. Laquerre, Rev. Humphrey Martorell, C.R., Rev. Daniel Gnidica, O.S.B., Rev. Charles J. Murray, S.J., Rev. Joseph Rosell, S.F.

III. *De Sacramentis et de Cultu Divino:* Very Rev. John B. Liciotti, Very Rev. Howard L. Delaney, V.F., Rev. Joseph J. Walsh, Rev. Andrew J. Sucek.

IV. *De Temporalibus:* Very Rev. Joseph F. Warnat, Very Rev. Leo J. Thome, V.F., Rev. Raymond Layton, O.S.B., Rev. Charles J. Murray, S.J., Rev. Arthur R. Kerr.

The General Committee will meet at the Chancery Office at 1:30 o'clock on the afternoon of August 10th for the final determination of the approval or revision of the proposed statutes.

The Particular Committees have deliberated carefully and prudently over the *agenda* for the Synod, and the conclusions of their work are being submitted to each priest in the form of a preliminary draft. Independently from the recommendations made at the respective Deanery meetings, every priest is free to review these prospective Statutes and to submit suggestions to the Promoter. They shall receive critical attention. The copy of the draft, however, is to be retained by each priest for future reference.

The officers of the Synod shall be:

Promoter	—Rt. Rev. Msgr. Aloysius J. Miller, V.G.
Procurator of the Clergy	—Very Rev. John B. Liciotti
Secretary	—Rev. Patrick C. Stauter
Notary	—Rev. John J. Kelley
Master of Ceremonies	—Rev. Justin McKernan, O.S.B.

We earnestly pray to Jesus Christ our Lord, Founder and Ruler of the Church, that this, the First Synod of the Diocese of Pueblo, may be favored with the guidance of His Holy Spirit in all its deliberations. To this end We designate and decree that the collect "De Spiritu Sancto" be constituted an *oratio imperata pro re gravi* (OIg) from July 15th to August 25th, and that it replace the current *oratio imperata.* The faithful will be asked to unite with their clergy in the recitation of this *oratio imperata* in English after the Masses on Sundays, having been told its purpose.

Given at the Bishop's House in Pueblo, Colorado, on the Feast of SS. Peter and Paul, this 29th day of June, in the Year of Our Lord 1948.

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The Dioceses of Syracuse, Des Moines and Rapid City have been consecrated by their respective Bishops to the Immaculate Heart of Mary.

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The Archdiocese of St. Louis has set up an archdiocesan music commission and an archdiocesan liturgical commission.

SECULAR

Religion in Public Schools

Most Rev. Vincent J. Ryan, D.D., Bishop of Bismarck, and Most Rev. Leo F. Dworschak, D.D., Auxiliary of Fargo, in a joint statement, said that because the withdrawal of the Sisters would close some schools in North Dakota, in such school districts as the people and the school boards find it desirable and necessary to retain the services of the Sisters, the latter will continue to teach, attired in a manner which is in strict compliance with the law. During the last school term there were seventy-three Sisters teaching in the public schools of the State: twenty-five in nine schools of the Fargo Diocese and forty-eight in ten schools of the Bismarck Diocese.

At the opening of school, the Sisters were teaching in civilian garb in twelve of the nineteen schools. Five of the schools were transformed into parochial schools. At two schools, in Gladstone and Olga, the Sisters have resigned as teachers.

The five Franciscan nuns who taught in the Dixon, New Mexico, schools have refused to sign contracts with the public school board. They taught in a junior and senior high school owned by Catholics. In the same town there is a grade school built by the community and taught by lay teachers. The Catholic authorities have agreed to lend their school building rent-free to the county school board of education.

Dr. Erwin R. Shaver, of the International Council of Religious Education, spoke at a meeting of the Association of Council Secretaries at Lake Geneva, Wisconsin, and said that ninety per cent of the released time systems continue to function in twenty-two States.

Mrs. Vashti McCollum made a recent attempt to prevent the use of the compulsory school machinery in the interests of released time religious instruction in non-public school buildings, a practice that continues in the schools of Champaign, Illinois. Her petition was also drawn to forestall the renting of public school buildings for after-school religious instruction such as is contemplated by the Champaign Council of Religious Education. But the Champaign County Circuit Court issued instead a simple writ of mandamus ordering local schools to adopt rules against religious instruction in the manner heretofore conducted.

Dr. Abram J. Feldman, of Hartford, Connecticut, at the fifty-ninth annual Convention of the Central Conference of American Rabbis, advocated the founding of interfaith councils to stimulate weekday religious education outside the public school system, each group sponsoring religious instruction in its own churches or synagogues, the councils serving as promotional units.

Rabbi William F. Rosenblum, President of the Synagogue Council of America, and Henry Epstein, Chairman of the National Community Relations Advisory Council, coordinating bodies for rabbinic and lay Jewish groups, declared they consider the New York State system of released time to be inconsistent with the American principle of the separation of Church and State and believe the system to have been invalidated by the recent United States Supreme Court decision.

Two Brooklyn parents have entered suit with the Supreme Court in Brooklyn to halt religious instruction in New York public schools during school hours. A similar challenge is awaiting decision in Albany.

Rulings of the State Attorney General in Pennsylvania lay down the following norms. Religious instruction may not be given to public school pupils in public school buildings when classes are in regular session or when not in session. The reading of the Bible without comment is not forbidden; nor is a study of the development of religion or a study of church history, if these subjects are taught objectively. For the purpose of religious instruction outside school buildings, classes may not be dismissed an hour earlier, but pupils may be released an hour in advance if school remains in session. The giving of religious intruction on released time is not forbidden if it is not in conflict with the principles of the decision of the Supreme Court of the United States and if the Justice Department does not in the future rule that the plan violates the State or the Federal Constitution. Awaiting this ruling, a case introduced at Easton was suspended; now a date is sought for the presentation of argument.

The Metropolitan Church Federation of St. Louis has determined on a program of religious instruction after school hours for the next school term, a plan to supplant the released-time system recently abolished. Teachers will be trained in conjunction with the annual laboratory training school for religious teachers and for parents, a school sponsored by the Federation.

In California, though the Attorney General ruled that the California system is not affected by the decision of the United States Supreme Court, inasmuch as religious education is given off the school premises, the Santa Barbara Board of Education has canceled the released-time program because it interrupted the regular school work; the San Bruno Board of Education has done likewise; and in Redlands, the churches will substitute a course of after-school classes in place of the released-time program which has been discontinued there also.

The New Orleans Council of Churches has abandoned the weekday religious education program inaugurated in 1943 under which the instruction was given on released time in church buildings near the schools.

In Indiana, school authorities in Delaware County have advocated that released-time programs be not adopted until the question of their constitutionality is cleared up; and similar action was taken by the Bluffton (Wells County) Council of Religious Education. But representatives of the associated churches of Fort Wayne are negotiating with the city officials for the purpose of holding religious classes in public transit busses parked in the vicinity of the public schools long enough to hold classes for the pupils of the third, fourth, and fifth grade. In Marion, Bible instruction will be continued in the public schools, in virtue of a decision reached after three petitions for its continuance were received by the school board.

In Kansas, the Wichita Board of Education by a vote of 5-4 voted to continue a weekday religious education program under which religious instruction is given one hour a week in nearby churches on released time. In Hutchinson, a group of residents sought an injunction to halt a released-time program; the school board then banned it and further forbade religious education leaders to enter the schools to distribute cards on which the respective parents could sign their names as a request that religious training be given their children.

In Virginia, the City Attorney of Danville has held that the religious education program of that city is not unconstitutional, since neither the school board nor any of its employees supervise it in any way; as a consequence it will continue to operate there in the fourth, fifth, and sixth grades of the city's white grammar schools. The School Board of Fairfax County has decided to con-

tinue the eighteen-year-old plan of giving religious instruction in the public school buildings until it is challenged in the courts. But the Board of Suffolk has banned a system of religious education in the schools during school hours and has rejected a proposal by the Suffolk Council of Churches that a released-time program be substituted.

A character education program in grade as well as high schools was requested by the Bennington, Vermont, Council of Churches when credit for religious education in high schools was withdrawn after the decision of the Supreme Court of the United States.

The Superintendent of Schools in Forsyth County, North Carolina, says that religious instruction will be continued in the county system unless the State Department of Public Instruction rules otherwise. He also expressed his intention to increase the number of Bible teachers in county institutions from one to three.

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Bible Instruction

A group of city attorneys of Winston-Salem, North Carolina, prepared a report holding as unconstitutional the employment by the school administrators of teachers for Bible instruction in the public schools, since they were under the supervision of the Superintendent of Schools, though paid by the Ministers' Association. As a consequence, Bible classes were discontinued in the public school buildings; but courses for students of sixteen years and more will continue to be held in churches and other buildings adjacent to the three city senior high schools, the teachers to be paid by the Ministers' Association and credit to be given for the courses. Outside Winston-Salem, other school boards in North Carolina are continuing the programs of Bible study in public schools. The State Board of Education has announced that it will continue to give credit for such courses, will certify teachers for them, and will in no way hinder the program.

In Texas, college credit is given at the completion of a Bible course given off campus by twelve ministers and two women teachers holding fourteen Bible chairs in universities and colleges of that State.

The Attorney General of Florida says that Bible instruction in Florida is legal. It is an elective course which, according to the

State Superintendent of Schools, gives a necessary historical and literary background and provides a general guidance in ethical values accepted by our people.

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Appropriations for Cancer Courses

The medical schools of Georgetown University and Creighton University have each received a Federal grant of $23,000.00 for courses in cancer and $5,000.00 has been alloted for the same purpose to the dental school of Georgetown University.

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Anti-nudist Camp Law Violators

The Supreme Court of the United States has refused a hearing against the conviction imposing a sentence of one hundred eighty days in jail for the violation of the Los Angeles anti-nudist camp law.

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School Busses

The State Commission of Education of New York has ordered the trustees of a school district to provide bus transportation between the parochial school and the home of the Catholic parents of two children, a distance of eight miles, as long as the children are residents of the district and the school board continues to establish a bus transportation fund. A similar order was issued by the New York State Department of Education at Albany in sustaining appeals of parents after similar refusal by school boards.

The Supreme Court of the State of Washington has heard arguments challenging the refusal of school authorities to permit children attending a Christian Reformed Church school to ride the school bus of the Whatcom County School District. Mrs. Pearl Wanamaker, the State Superintendent of Schools, has ruled unconstitutional the 1945 statute permitting public school busses to transport private school pupils; but the Attorney General has ruled that the statute is constitutional. A previous statute, enacted in 1941, was held by the Supreme Court of the State to be unconstitutional.

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Bingo in New Jersey

A three-man legislative committee, in a special session on August 10th, agreed to submit to the voters on November 2nd the legalization of bingo for bona fide veterans', charitable, educational, religious, and fraternal organizations. To make this recommendation of a referendum effective an act of the legislature is needed as well as the signature of the Governor. The 1947 constitutional convention urged that the people be given an opportunity to vote on the question.

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St. Louis Birth Control Clinic

A birth control clinic in the St. Louis County Health Center was ousted by judicial order on the complaint that a private agency was using a tax-supported building.

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Protest to UN on White Slavery

Ten Catholic international organizations were among thirty-seven signers of a petition made to the United Nations Economic and Social Council urging it to submit to the United Nations General Assembly for immediate signature the International Draft Convention of 1937 to prevent the exploitation of women and children refugees through the white slave traffic.

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Political Report to UN on Value of Missionary Activity

Belgian and British administrators of African areas reported to the United Nations Trusteeship Council that a volume of devotion and constancy was given by missionaries that could not be obtained from lay teachers in government service. A similar report was made to the Council by the United Kingdom to the effect that the spread of Christianity and education are the most effective means of modifying African tribal customs with regard to marriage and the status of women.

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ECA and Parcel Post Rates

As a result of a postal subsidy granted by the Economic Cooperation Administration, parcel post rates have been cut on parcels mailed to Austria, Belgium, China, England, France, Greece, Italy, Luxembourg, the Netherlands, Trieste, and the Western Zones of Germany.

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Mexican Divorce Laws

A group of Mexican professional men has worked out a bill to tighten the present divorce laws under which there were more divorces last year than marriages.

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Educational Subsidy in Northern Ireland

The Education Act of 1947 revising the educational system contains the following provisions. Religious education is made compulsory in all county and voluntary schools. Teachers in voluntary schools, both primary and intermediate, are paid by the State. The State pays sixty-five per cent of the maintenance and capital costs of voluntary schools, including Catholic schools. One hundred per cent of the heating, lighting, and other maintenance costs are defrayed by the State if the voluntary school will submit to a control committee of six, four of whom the school may select while the other two are selected by the local educational authorities.

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Contraceptives in Norwegian Army

The Lutheran Bishop, Eivind Berggrav, has presented to the Norwegian Parliament a protest signed by nearly half a million persons condemning the distribution of contraceptives to Norwegian soldiers, an innovation made legal last winter.

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The Name of God in the Swiss Constitution

"In the Name of Almighty God" should be retained as the opening words of the Swiss Constitution in the opinion of 98% of Swiss Catholics and of 94½% of Swiss Protestants to whom the question

was directed in a poll of 52,000 persons conducted by the Helvetic Society on basic community problems.

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Czecho-Slovak Governmental Favors

The Czecho-Slovak Government has announced that private schools in Bohemia and Moravia will be permitted to operate as in the past. In has also excused Catholics from working on Sunday on public projects in the so-called volunteer labor brigades; Catholics will be allowed to work on these projects on Saturdays or other days.

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Student Loyalty Tests in Czecho-Slovakia

University students in Czecho-Slovakia must pass examinations before a purge committee of loyal Communist students after filling out a questionnaire giving information on their whole life.

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Romanian Control of Church Communications

A new Communist decree in Romania forbids any control of non-Orthodox denominations by mother churches abroad; all communications from the latter must be made through governmental channels. Moreover, it requires that officials of these denominations shall have the approval of State authorities. It bans all political parties based on religious principles. Moreover it makes State property all confessional and private schools, including the buildings, furniture, libraries and laboratories belonging to church congregations, religious communities and private societies operating or supporting general, technical, or professional education.

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Italian Conviction for Slandering Pope

A court in Bergamo sentenced one Francesco Bonelli to eight months in prison for false charges made against the Pope in an election meeting.

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Italian Modernistic Paper

A new periodical has appeared in Rome, entitled *Regno di Dio*, sponsored by leaders of the so-called Movement of Religion which announces as its aim the altering of "defects" in the Catholic Church such as its aloofness from the great historical churches of Christianity, its "overemphasis" on auricular confession, its "excessive" use of Latin in the liturgy, its insistence on clerical celibacy, and its rigor in imposing laws on marriage.

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Luxembourg Subsidy to Non-Catholics

Most Rev. Aloisius J. Muench, D.D., Apostolic Visitator to Germany, writes that the Luxembourg Government, heading a nation that is ninety per cent Catholic, furnishes Protestants with churches and Jews with synagogues and pays the salaries of Protestant clergymen and of Jewish rabbis.

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Affairs in Germany

Catholic authorities in Berlin received a grant of forty thousand new German marks from the United States Military Government's reorientation fund. The grant contemplated approved projects inclusive of adult education, the translation of theological reference works, and the training of church musicians.

Spanish scholars and scientists have been specifically excluded from a program set up by the educational division of the United States Military Government for Bavaria. The cultural exchange branch of the Military Government explained that these scholars and scientists cannot be regarded as representatives of democratic ideas.

On August 28th Germany's first post-war Catholic newspaper appeared in Augsburg with an initial subscription list of one hundred thousand.

A constitution for a German democratic republic of Soviet-sponsored peoples provides religious clauses in Article 5, among which there is listed permission for the use of school rooms for religious instruction if the parents of the children desire it and the practice does not conflict with the normal schedule of classes.

Plans for new farming settlements in the Soviet Zone of Germany make no provision for church buildings. But an order requiring prior approval of all church gatherings and of all sermons has been rescinded and there are no longer spies in the congregation at church services.

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Affairs in Hungary

Dr. Karl Barth, widely known Protestant theologian, advised the Protestant Reformed Church in Hungary to steer a middle course between Rome and Moscow. In an article in a Communist Hungarian newspaper, he stated further that the Communist-dominated Government in Hungary had exercised its power in a way that could well be approved in general. Dr. Hans Asmussen, former President of the United Evangelical Churches of Germany, has maintained that the Church must not take a stand either for or against the East or the West. Pastor Diem, of the Christian Society of Wuerttemberg, believes that a Christian should not take part in any movement against Communism. But the Lutheran Bishop, Lajos Ordass of Budapest, head of the Lutheran Church in Hungary, has definitely expressed his opposition to the nationalization of private schools and has been attacked for so doing in the Communist-controlled newspapers.

His Eminence, Josef Cardinal Mindszenty, says that the campaign of slander against the Church cannot be met because of the virtual ban on Catholic papers. The attack is made in the press and in Parliament and it centers on the Pope, the priesthood, and all Catholic institutions. The Bible is quoted in public tirades, according to a Hungarian Catholic Action paper, and the quotation is turned against the Church. His Eminence also notes that pilgrimages are prevented through prohibitions issued to ticket-sellers ordering them not to sell railway tickets on given days; that sacred processions are not allowed; that all the land and the property of the Church has been requisitioned, and all the schools nationalized.

His Eminence laid down certain conditions on which he would be willing to negotiate with the governmental authorities, but they were rejected. These conditions were the following: no State control of Catholic schools; the restoration of dissolved Catholic organizations and the restitution of their funds; the permission to publish

an uncensored Catholic daily with the same newsprint allowance as other newspapers.

The report of the government-controlled Hungarian press gives the number of nationalized schools as 5437. Another report listed 4474; 2797 Catholic; 1097 Reformed; 579 Jewish and Greek Orthodox; 1 Unitarian. About twenty to twenty-five per cent of the high schools and a few colleges for girls were not nationalized. These continue to receive a State subsidy.

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Lourdes as Tourist Center

The Bishop of Tarbes and Lourdes has protested the governmental classification of Lourdes as a tourist center. This classification obliges pilgrims to pay a " holiday " tax.

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School Plight in France

Reports from Paris indicate that municipal authorities have gone on strike in Anjou against the government over the nationalization of Catholic schools in coal mining areas. They maintain that they were elected with the understanding that they would work for public aid to Christian schools. Local prefects have held that such aid is illegal, while the National Council and the National Assembly have voted to nationalize schools in coal mining areas.

Parents pay three and a half million dollars annually for the support of the public schools, but these are virtually empty. Teachers in the public schools receive twice the salary of those in religious schools. Besides this, the government taxes the Christian schools when entertainments and fairs are held to aid in their support. Some who refused to pay the tax, inclusive of priests and parents' groups, have been acquitted; others have been given light fines.

The mayors and officials of one hundred and thirty-four towns in Brittany staged an eight-day strike to call attention to the unjust tax status of the Christian schools.

The government, however, has recently placed a subsidy at the disposal of families unable to pay the tuition fees of their children in attendance at Christian schools. The Christian Democratic Party received definite assurance from the government of Andre Marie that the subsidy would remain available. The plan was at-

tacked by the congress of free-thinkers attended by Communists, Socialists, and Masons. Its author, Madame Poinso-Chapuis, former Minister of Health, was dropped from the Marie Cabinet.

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Eugenic Legislation in Japan

The Japanese Diet, the upper house, has passed the so-called eugenic protection bill to legalize birth control, abortion and sterilization. There is a good chance, however, that it may be defeated in the lower house.

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Influence of Moscow Orthodoxy

Control of the Orthodox Church has been achieved in Romania and Bulgaria by the Moscow Patriarchate. In Serbia, the anti-Communist memorandum of the Orthodox clergy has not been retracted. Moreover, no official praise has been given Tito by the head of the Orthodox Church in Serbia, while pastoral letters have refrained from any reference that might seem to support Communism.

The Russian Orthodox Church in Japan broke off relations with Moscow in February 1947 to place itself under the jurisdiction of the Russian Orthodox Church in America.

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Russian Orthodoxy Ignores Amsterdam

The Patriarchs of the Russian Orthodox Church Synod in Moscow declined participation in the assembly of the World Council of Churches held in Amsterdam.

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Religious Freedom in Greek Constitution

In the proposed Greek Constitution the articles on the freedom of the religious conscience were drawn by the Hierarchy of the Greek Orthodox Church for submission to the Parliamentary constitutional committee. They begin with the statement that the prevailing religion is the Greek Orthodox but they forbid proselytism, insisting on the protection by law of all religions which do not

conflict with public order and averring that no one can be exempted from his duty to the State because of his religious conscience. A memorandum submitted by the Church for inclusion in the constitution requests that the appointment of non-Orthodox ministers and the erection of non-Orthodox churches, mosques, and synagogues be forbidden except with the special permission of the State.

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Affairs in India

In Trivandrum a committee of congress has introduced a resolution that Catholics may have their own schools, provided that they seek no public funds for them.

Officials of Travancore University have refused to sanction the opening of a Catholic college for which grounds and buildings have been acquired.

Catholics and other Christian groups of Madras Province are striving for a revision of a recent enactment of the Madras Government providing for free educational opportunities granted low caste Harijans if they are Hindus but not if they are Christians.

ANGLICAN VIEW OF COMMUNISM

The recent Lambeth Conference through its committee expressed the view that Communism is a "secularized form of the Christian hope, drawing some of its springs from the Bible and presenting something like a caricature of the Christian hope of Christian doctrine and cultus, and above all of Christian eschatology." However, it regarded dialectical materialism and the type of Communism in which it is embodied as a most destructive form of secularism, highly antagonistic to Christianity. "Between the two," it averred, "there can be no compromise, and it seems to be increasingly probable that it is between these two that the world must choose. Neutral positions may not long be tenable. No presentation of the Christian world-view can command the assent of the rising generation unless it has squarely come to grips with the dogmas of dialectical materialism."

Chronicle

GENERAL

A five-ton block of marble, designed as a memorial of gratitude to the Pope for his efforts to preserve Rome from destruction during the war, was unveiled under the portico of San Lorenzo Outside the Walls, the front portion of which was destroyed in the first bombing of Rome, July 19, 1943.

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Hon. Myron Taylor conferred with leaders of the World Council of Churches with regard to the problems of peace that confronted the Amsterdam Conference of the Council.

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At the Secret Consistory of June 21, Giuseppe Cardinal Pizzardo and Benedetto Aloisi Cardinal Masella were made Cardinal Bishops of Albano and Palestrina respectively. Domenico Cardinal Jorio received the insignia of the Camerlengo of the Sacred College, succeeding Francesco Cardinal Marmaggi.

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Most Rev. Martin J. O'Connor, D.D., Rector of the North American College, has been appointed a member of the Central Committee for arrangements looking toward the observance of the Holy Year, 1950. A special airfield is contemplated among those plans.

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August 14-22, the septenary of the restored Cologne Cathedral was observed. The ceremonies were opened with a Pontifical Mass celebrated by His Eminence, Clemente Cardinal Micara, Prefect of the Sacred Congregation of Rites and Apostolic Legate; the sermon was preached by His Eminence, Joseph Cardinal Frings, Archbishop of Cologne. Among the prelates attending were Most Rev. Aloisius J. Muench, D.D., Bishop of Fargo and Apostolic Visitator to Germany, and Most Rev. John Mark Gannon, D.D., Bishop of Erie and representative of the Administrative Board of the National Catholic Welfare Conference.

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Most Rev. Leo Peter Kierkiels, C.P., D.D., Apostolic Delegate in India since 1931, has been named first Apostolic Nuncio to that country. He remains Apostolic Delegate to Pakistan, Burma, and Ceylon.

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His Eminence, Francis Cardinal Spellman, delivered the invocation at the opening of the first International Poliomyelitis Conference in New York City.

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His Eminence, Francis Cardinal Spellman, addressed the eighty-fifth annual New York State Convention of the American Federation of Labor.

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Most Rev. Richard J. Cushing, D.D., Archbishop of Boston, addressed the sixty-second Massachusetts State Convention of the American Federation of Labor.

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On August 14, the Confraternity of Christian Doctrine Pilgrimage left Boston; it was received in audience by the Pope on September 1.

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On June 22, Most Rev. John A. Floersh, D.D., Archbishop of Louisville, celebrated a Pontifical Mass in observance of the twenty-fifth anniversary of his consecration.

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On July 8, Most Rev. Henry J. O'Brien, D.D., Bishop of Hartford, celebrated the twenty-fifth anniversary of his ordination with a Pontifical Mass.

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On September 5, the renewed Cathedral of St. John, Cleveland, was consecrated.

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Pontifical Masses were celebrated on Labor Day in New York by Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington; in Los Angeles, by Most Rev. J. Francis A. McIntyre, D.D., Archbishop of Los Angeles; in Columbus, by Most Rev. Francis J. Haas, D.D., Bishop of Grand Rapids; and in San Francisco, by Most Rev. Hugh A. Donohoe, D.D., Auxiliary of San Francisco.

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June 28-30, the Catholic Theological Society of America met in Chicago.

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The twenty-ninth annual meeting of the Franciscan Education Conference was held at Mayslake.

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August 17-19, the sixty-sixth annual convention of the Supreme Council of the Knights of Columbus was held in Houston, Texas. It opened with a Pontifical Mass celebrated by Most Rev. Wendelin J. Nold, D.D., Coadjutor of Galveston. The sermon was preached by Most Rev. Louis J. Reicher, D.D., Bishop of Austin. Most Rev. Christopher E. Byrne, D.D., Bishop of Galveston, presided.

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August 1-6, the convention of the Ancient Order of Hibernians of the United States and Canada was held in Montreal.

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Most Rev. Moses E. Kiley, D.D., Archbishop of Milwaukee, celebrated Pontifical Mass at the convention of the Catholic Central Verein and the National Catholic Women's Union.

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September 11-15, the twenty-fourth annual national convention of the National Council of Catholic Women was held in New Orleans, opening with a Pontifical Mass celebrated by Most Rev. Joseph F. Rummel, D.D., Archbishop of New Orleans. The sermon was preached by Most Rev. Michael J. Ready, D.D., Bishop of Columbus.

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At the forty-sixth convention of the Knights of St. John and its Ladies Auxiliary held in Buffalo, a Pontifical Mass was celebrated by Most Rev. John F. O'Hara, C.S.C., D.D., Bishop of Buffalo, at which the sermon was delivered by Most Rev. James E. Kearney, D.D., Bishop of Rochester.

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July 12-16, the twenty-second biennial convention of the Catholic Daughters of America was held at Pasadena, California, commemorating the forty-fifth anniversary of the founding of the organization. The convention opened with a Pontifical Mass celebrated by Most Rev. Joseph T. McGucken, D.D., Auxiliary of Los Angeles, at which the sermon was preached by Most Rev. William D. O'Brien, D.D., Auxiliary of Chicago.

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August 9-14, the biennial national convention of the Daughters of Isabella was held in Boston.

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August 9, the seventy-sixth annual convention of the Catholic Total Abstinence Union was held in Pittsburgh.

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Three hundred and fifty delegates attended the twenty-second annual meeting in Atlantic City of the Catholic Library Association.

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June 18-20, the twelfth national Catholic Laymen's Retreat Conference was held in St. Louis.

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September 4-6, the seventh biennial Congress of the Laywomen's Retreat Movement was held at Webster College, Webster Groves, Missouri.

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August 2-7, the tenth Institute of Liturgical Music was held at Loras College, Dubuque.

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August 2-6, the ninth annual Liturgical Week was held in Boston.

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September 3-5, the thirty-fourth annual convention of the Newman Club Federation met in Minneapolis.

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August 26-29, the thirteenth national convention of the Catholic Students' Mission Crusade was held at Notre Dame University, at which a Pontifical Mass was celebrated on August 27 by Most Rev. John F. Noll, D.D., Bishop of Fort Wayne.

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July 2-4, the first convention of Catholic Broadcasters of the United States and Canada was held in Boston.

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At the centenary celebration of Mt. de Chantal Academy, Wheeling, the sermon was preached by Most Rev. Michael J. Ready, D.D., Bishop of Columbus.

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On September 25, De Paul University, Chicago, celebrated its golden jubilee, at which a Pontifical Mass was celebrated by Most Rev. William D. O'Brien, D.D., Auxiliary of Chicago, who was a member of the first graduating class of 1899. The sermon at the Mass was preached by His Eminence, Cardinal Samuel A. Stritch, D.D., Archbishop of Chicago.

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Kenneth C. Royall, Secretary of the Army, spoke at the 110th Commencement of Xavier University, Cincinnati, and laid the cornerstone of the University's 28,000 square foot armory which is to be constructed with the assistance of the Federal Works Agency.

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On August 22, Most Rev. Richard T. Guilfoyle, D.D., Bishop of Altoona, celebrated a Pontifical Mass at Mt. Aloysius Junior College, Cresson, Pa., to mark the centenary of the establishment of the Sisters of Mercy in Loretto, Pa.

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The annual meeting of the Belgian Hierarchy at Brussels was attended by Most Rev. Fernando Cento, Apostolic Nuncio to Belgium.

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On August 22, the Inter-American Catholic Social Action Confederation opened its meeting in Rio de Janeiro. The meeting was attended by Most Rev. Karl J. Alter, D.D., Bishop of Toledo, and Most Rev. William T. Mulloy, D.D., Bishop of Covington.

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On September 3, the International Congress of the Apostleship of Prayer met in Rome.

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September 26-October 4, the third Inter-American Congress on Catholic Education met at La Paz, Bolivia.

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A new diocese, St. Paul, has been set up in Canada from territory taken from the Archdiocese of Edmonton. The first bishop of the diocese is Most Rev. Maurice Baudoux, D.D.

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Twenty-six nations, inclusive of Russia, were represented in the first International Pax Christi Pilgrimage to Lourdes, held as part of its crusade for peace.

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September 4-6, the thirtieth anniversary of the establishment of the feminine section of Italian Catholic Youth groups was observed with a meeting in Rome.

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September 10-12, the eightieth anniversary of the establishment of Italian Catholic Youth was observed with a meeting in Rome.

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Enrico Cardinal Sibilia died at the age of 87. Ill health had kept him from assuming the office of Dean of the Sacred College on the death of Gennaro Granito Cardinal Pignatelli di Belmonte.

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Raffaelo Carlo Cardinal Rossi, O.C.D., Secretary of the Sacred Consistorial Congregation, died on September 16 at the age of 71.

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Emanuel Cardinal Arce y Ochotorena, Archbishop of Tarragona, died at the age of 69.

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Most Rev. Paschal Robinson, O.F.M., Papal Nuncio in Eire since 1929, died on August 27, at the age of 78.

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Most Rev. Alexander J. McGavick, D.D., Bishop of La Crosse, died on August 25, at the age of 85. He was buried after a Pontifical Requiem Mass celebrated by Most Rev. Moses E. Kiley, D.D., Archbishop of Milwaukee. The sermon was preached by His Eminence, Cardinal Samuel A. Stritch, D.D., Archbishop of Chicago, who had promised to deliver the sermon on October 17 when the observance of Bishop McGavick's golden jubilee of consecration was to have occurred. The Most Rev. Apostolic Delegate, whose purpose it was to celebrate the Pontifical Mass commemorating the anniversary, will celebrate a Memorial Mass in connection with the annual national meeting of the National Catholic Rural Life Conference at La Crosse in October.

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On August 5, Most Rev. James A. Griffin, D.D., Bishop of Springfield, Illinois, died at the age of 65. The funeral Mass was celebrated in the Cathedral of the Immaculate Conception, Springfield, by His Eminence,

Cardinal Samuel A. Stritch, D.D., Archbishop of Chicago. The sermon was preached by Most Rev. Ralph L. Hayes, D.D., Bishop of Davenport.

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Rt. Rev. Frederic M. Dunne, O.C.S.O., Abbot of the Trappist Abbey of Our Lady of Gethsemani, died at the age of 75. The funeral Mass was celebrated by Most Rev. John A. Floersh, D.D., Archbishop of Louisville.

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DIGNITIES

Sir Edward Appleton, leading British physician and President of the International Scientific Radio Union, has been appointed to the Pontifical Academy of Science.

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On June 29, Most Rev. James T. O'Dowd, D.D., was consecrated Titular Bishop of Cea and Auxiliary of San Francisco. The consecrating prelate was Most Rev. John J. Mitty, D.D., Archbishop of San Francisco; the co-consecrating prelates were: Most Rev. Thomas A. Connolly, D.D., Coadjutor of Seattle and Most Rev. Hugh A. Donohoe, D.D., Auxiliary of San Francisco. The sermon was preached by Rev. Lyman A. Fenn, S.S.

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Most Rev. Edward P. McManaman, D.D., has been named Titular Bishop of Floriana and Auxiliary of the Bishop of Erie.

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Most Rev. Percival Caza, D.D., has been named Titular Bishop of Albule and Auxiliary to the Bishop of Valleyfield in the Province of Quebec.

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Most Rev. Aloisius J. Muench, D.D., Bishop of Fargo and Apostolic Visitator of Germany, accepted an honorary doctorate from the Catholic Theological Faculty of the University of Muenster.

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Most Rev. J. Francis A. McIntyre, D.D., Archbishop of Los Angeles, accepted the honorary degree of doctor of laws from Loyola University.

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Most Rev. Batholomew J. Eustace, D.D., Bishop of Camden, accepted the honorary degree of doctor of laws from St. Bonaventure's College. He also delivered the Commencement Address.

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Most Rev. Stephen Appelhans, S.V.D., D.D., has been named Vicar Apostolic of East New Guinea, and Most Rev. Leo Arkfeld, S.V.D., D.D., has been appointed Vicar Apostolic of Central New Guinea.

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Rt. Rev. Msgr. Charles Gilmartin, Vicar General of the Diocese of Belleville, has been named a Protonotary Apostolic.

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The following have been appointed Domestic Prelates: Rt. Rev. Msgrs. Maurice S. Sheehy, of the Archdiocese of Dubuque, head of the department of religion of The Catholic University of America; William J. McDonald and Martin J. Higgins, of the Archdiocese of San Francisco; Richard T. Crean, Charles G. McCorriston, Martin J. Lipinski, Francis J. Sullivan, and William J. Lannary, of the Diocese of Trenton.

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The following have been named Papal Chamberlains: Very Rev. Msgrs. Richard Burns, of the Diocese of Rochester, Vice Rector of the North American College; James J. Hogan, John E. Rura, Martin A. Madura, James S. Foley, and Salvatore R. Di Lorenzo, of the Diocese of Trenton.

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Rt. Rev. Charles E. Fitzgerald, spiritual director of the North American College from 1934 till 1940, has been reappointed to that office.

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Rev. Edward J. O'Donnell, S.J., has been named President of Marquette University.

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Rt. Rev. Edward Hawks, of Philadelphia, has been admitted to the French Legion of Honor.

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Brigadier Gen. Geoffrey P. Baldwin, U.S.A., retired, who is chief of the CARE mission in Italy, has been made a Knight Commander, military class, of the Order of St. Gregory the Great.

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The following have been promoted to the rank of Knight of St. Gregory: T. Joe Cahill, of Cheyenne, Wyoming, and James P. Nash, of Austin, Texas.

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The medal, *Pro Ecclesia et Pontifice*, has been conferred on Mrs. Geoffrey Keyes, wife of the commanding General of the U. S. forces in Austria.

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At the convention of the Catholic War Veterans in Chicago, Anthony Forbes was elected National Commander.

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Dr. Hugh Stott Taylor, Dean of the Graduate School at Princeton University and member of the Pontifical Academy of Sciences, received an honorary doctorate from Laval University.

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